VOL. I. PART SEVENTH AND LAST.

AN

ANALYTICAL DIGEST

OF ALL

THE REPORTED CASES

DECIDED IN THE

SUPREME COURTS OF JUDICATURE IN INDIA,

IN THE

COURTS OF THE HON. EAST-INDIA COMPANY,

AND ON APPEAL FROM INDIA,

BY HER MAJESTY IN COUNCIL.

TOGETHER WITH AN INTRODUCTION,

NOTES, ILLUSTRATIVE AND EXPLANATORY, AND AN APPENDIX.

BY

WILLIAM H. MORLEY,

OF THE MIDDLE TEMPLE, ESQUIRE, BARRISTER-AT-LAW,

MEMBER OF THE ROYAL ASIATIC SOCIETY, AND OF THE ASIATIC SOCIETY OF PARIS.

"IF IT BE ASKED HOW THE LAW SHALL BE ASCERTAINED WHEN PARTICULAR CASES ARE NOT COMPRISED UNDER ANY OF THE GENERAL RULES, THE ANSWER IS THIS: THAT WHICH WELL-INSTRUCTED BRAHMANS PROFOUND SHALL BE HELD INCONTESTABLE LAW."

MENU, b. xii. v. 108.

IN TWO VOLUMES.

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CONTAINING THE INTRODUCTION AND THE DIGEST.

LONDON:

WM. H. ALLEN AND Co., LEADENHALL STREET;

V. AND R. STEVENS AND G. S. NORTON, 26 BELL YARD, LINCOLN'S INN,

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Blackstone's Commentaries, Introd. Sec. 3.

ANALYTICAL

DIGEST OF REPORTS.

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TO

SIR JAMES WEIR HOGG, BARONET,

M.P., F.R.A.S.,

DEPUTY CHAIRMAN OF THE

HONOURABLE COURT OF DIRECTORS

OF THE

EAST-INDIA COMPANY,

&c. &c. &c.

SIR,

To no one could the following pages be so appropriately dedicated as to yourself. Your long experience as a Member of the Bar of Calcutta, and the prominent position you have more recently occupied in the direction of the affairs of India, render you peculiarly qualified to form an opinion of a work which necessarily embraces the different systems for the administration of justice in our Eastern Empire.

I submit this Digest of Cases to your criticism, with the assurance that your intimate knowledge of the various subjects it comprehends, enabling you of all others most fully to appreciate the numerous difficulties which have attended its compilation, will induce you to look with a favourable eye upon its many imperfections.

Of these imperfections no person can be more conscious than myself. I trust, nevertheless, that I may at least have facilitated the future labours of others, and thereby have contributed somewhat towards promoting the welfare of a portion of the human race in whom I have ever taken the deepest interest. Your already expressed opinion of the object and plan of my undertaking encourages me to hope, that however inadequately I may have accomplished my task, I may not, in this respect, be altogether disappointed.

I have the honour to remain,

SIR,

Your faithful servant,

WILLIAM H. MORLEY.

November 1850.

15 SERLE STREET,

LINCOLN'S INN.

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NOTICE.

The concluding part of the First Volume will contain the Introduction, Table of Titles, &c., to precede the Digest, together with a Glossary and Indices of the Names of Cases and Regulations, &c., referred to therein. The Addenda of Cases will be deferred until the conclusion of the Second Volume, so as to render the work as complete as possible.

ANALYTICAL

DIGEST OF REPORTS

ABATEMENT.

I. Of Nuisance.
II. Of Action.—See Action, 51.
III. Plea in Abatement.—See Pleading, 25.

I. Of Nuisance.

1. Where *A* and *B*, residing in a certain alley, sued to compel the removal of an alleged nuisance, viz. a gate built at the end of the alley, which caused damage to them, inasmuch as it prevented their carts from entering the alley; it was held, that as there was no evidence to prove that the dispute about the gate was contemporaneous with its being put up, the claim of *A* and *B*, as a matter of right, was without any foundation: and as it was to be inferred, from the fact that no other householder in the alley had joined in the suit to compel its removal, that the benefit of the gate to the community, as a defence against thieves, &c., much exceeded the inconveniences arising from it, *A* and *B* were nonsuited. *Bhuwanneeshunkur Koosuljee* v. *Jugguneshwur and another.* 12th Sept. 1822. 2 Borr. 371.—Romer, Sutherland, & Barnard.

2. Where *A* repaired an embankment whereby the land of *B* was laid under water, and it appeared that the embankment was not in existence when the parties purchased their estates, it was decreed that the embankment should be broken down, and that *B* was entitled to the damages sued for. *Abeh Nundee Mustoofee* v. *Doorga Doss.* 15th Jan. 1825. 4 S. D. A. Rep. 8.—Smith & Goad.

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ABORTION.—See Criminal Law, 46 *et seq.*

ABSENTEE.—See Evidence, 8 *et seq.* 20, 87, 95 *a.*; Inheritance, 75; Manager, 8.

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ACCIDENTAL HOMICIDE.—See CRIMINAL LAW, 49 *et seq.*

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ACCOUNT.

I. IN THE SUPREME COURTS.
1. *Generally*, 1.
2. *Bill for an Account*, 10.
3. *Interest on.—See* INTEREST, 4.
4. *With Native Women.—See* NATIVE WOMEN, 4.

II. IN THE COURTS OF THE HONOURABLE COMPANY.
1. *Generally*, 11.
2. *Interest on.—See* INTEREST, 22, 23.

I. IN THE SUPREME COURTS.

1. *Generally.*

1. If an account have been settled by agreement between the debtor and creditor, the creditor cannot annul such agreement on the equity side of the Court, unless he can shew fraud in the party contracting with him, or some undue means made use of to draw him into such an agreement. And should the creditor file a bill to set aside the settled account, a demurrer will be allowed. *Iyasamy* v. *Colingaroy Moodeliar.* 30th Oct. 1809. 2 Str. 47.

2. But if the terms of the agreement were not fulfilled, the creditor may have ground to call upon the other contracting party for a specific performance. *Avadanum Paupiah* v. *Tulloh and others.* 30th Oct. 1809. 2 Str. 54.

3. The plea of a stated account will be allowed to stand for an answer, with the usual liberty to except. *Ib.*

4. An account, though settled, may be re-examined where particular errors appear, independently of any agreement for the purpose, and notwithstanding a bond may have been given for the balance, and releases have been executed. If an omission can be shewn, for which credit ought to have been given, it is a matter of *surcharge;* or if there has been a wrong debit, it may be *falsified.* But if, on re-examination, the account be proved in any particular to be fraudulent, the whole account is infected, and liable to be set aside *in toto*, leaving the parties to go to another upon equal terms. If error only, however, be imputable, as that certain allowances have not been duly made, or that in certain particulars the party against whom the balance is found has been overcharged, equity will decree a fresh account, but one of a more limited nature, being restricted to the particulars pointed out appearing to be erroneous, and the proof of the error will be upon the party complaining; the account standing subject to the one side of it being surcharged, or the other falsified. *Shaick Devaljee* v. *Maury Chitty.* 7th Aug. 1809. 2 Str. 23.

5. If an account be settled by composition between the parties, it cannot afterwards be set aside or opened on discovery of error. *Ib.*

6. Otherwise it seems discretionary in the Court to set it aside *in toto*, or to order it to stand, with liberty to surcharge and falsify according to the circumstances. *Ib.*

7. On plea or answer, stating a settled account as a defence to a bill for an account, it seems doubtful whether the account relied on must be set forth by the defendant. *Ib.*

8. It was held, that the act of a son striking balances for different years in an account standing in the name of his father, for moneys *bonâ fide* taken up for the use of the family, being undivided, was good and valid, and rendered both the father and son responsible; and the principal sum sued for was decreed against them, together with simple interest at 12 *per cent.* up to the date of the decree, provided such interest did not exceed the principal,

according to Sect. 4. of Reg. I. of 1814. *Wujoo Bhaee Hurree Prusad and another* v. *Jaee Bhaee Wujehram and another.* 23d March 1819. 1 Borr. 310.—Hon. M. Elphinstone, Bell, & Prendergast.

9. In an action of debt against *A* and others, on a recognizance entered into by him under the 68th Equity Rule[1], to account to the Master for the estate of an infant of whom he had been appointed guardian, accounts were proved filed by *A* to a certain amount, but the account was not settled finally, so as to fix with certainty to what extent the sureties were bound to make good the defaults of their principal, and the Court gave judgment generally for the plaintiff on the recognizance, with a stay of execution, and subject to the further order of the Court; but by consent of the parties it was referred to the Master to take an account and ascertain the sum. *Sir William Burroughs* v. *Gopeenath Bose and others.* 29th January 1821. East's Notes, Case 24.

2. *Bill for an Account.*

10. Where property was bequeathed by a Hindú to his sons in different proportions, the two elder sons and two other persons being directed by the will to have the management of the estate, and the younger sons filed a bill for account, receiver, and partition, the account was adjudged by the Court previous to any other determination. *Anon.* Feb. 1814. East's Notes, Case 9.

II. In the Courts of the Honourable Company.

1. *Generally.*

11. An adjusted account, in the nature of a bond, is not actionable, unless it be written on stamped paper. *Framjee Manikjee* v. *Jaeeram Govind.* 11th Nov. 1822. 2 Borr. 621.—Romer.

12. An account current entered in a merchant's books, and signed by the debtor, was held to be a valid and actionable debt, not liable to the penalties of the stamp regulation; for though the acknowledgment partook something of the nature of a note of hand, it could not be rejected because not written on stamped paper, being executed by the party contracting the debt, so acknowledged by it, and not by a third person making himself responsible for such debt. *Panachund Oottumchund* v. *Ghoolam Khan.* 1823. 2 Borr 623.—Romer, Sutherland, & Ironside.

13. An account signed whilst under unlawful restraint is not binding. *Condaswamy Moodely* v. *M'Leod.* Case 7 of 1826. 1 Mad. Dec. 552.—Grant, Cochrane, & Oliver.

ACCOUNT BOOKS.—See Evidence, 126 *et seq.*

ACCOUNTANT GENERAL.

1. It was decided on the plea side that money declared by a decree to belong to a suitor in equity, and in the hands of the Accountant General, may be seized by the Sheriff in execution as a *debt* due to the defendant, the party whose money was in the Accountant General's hands being defendant at law.[2] *Rogonath Chund* v. *Bissonath Ghose.* 19th May 1824. Cl. R. 1829. 152. Mor. 277.

[1] 2 Sm and Ry. 130.

[2] Macnaghten, J, thought that this was the only mode of proceeding under the words of the Charter, although the Accountant General could not pay without an order of the Court on the equity side. The Charter declares that the debts so seized shall be payable as the Supreme Court (which must mean the Court on the plea side) shall direct In other and similar cases the same course had been pursued

2. Where a rule was obtained by the plaintiff that the Accountant General and Subtreasurer of the Company should pay over to the plaintiff certain arrears of salary due to the defendant, extended in their hands, the salary bills not being audited; the Court held, that there was therefore no ascertained debt, and discharged the rule. *Govindchunder Sain* v. *Mackenzie*. Nov. 1840. Mor. 302. note.

ACT.

I. Acts of the Legislative Council in India.

1. *Act* xi. *of* 1835, 1.
2. *Act* xxv. *of* 1838, 3.
3. *Act* xix. *of* 1841, 5.
4. *Act* xx. *of* 1841, 9.
5. *Act* xxiv. *of* 1841, 11.
6. *Act* xvii. *of* 1843. — *See* Trust and Trustee, 2, 3*a*.

II. Acts of Parliament. —*See* Statute *passim*.

I. Of the Legislative Council in India.

1. *Act* xi. *of* 1835.

1. Under the Indian Press Act (Act XI. of 1835), the original declaration, filed in the Supreme Court, proves itself as being a record. *Macnaghten* v. *Tandy*. 24th Oct. 1838. Mor. 288.

2. Under the same Act, the copy of a newspaper is evidence of the publication of such copy by the person whose name is subscribed to it. *Ib.*

2. *Act* xxv. *of* 1838.

3. In the New Will Act (Act XXV. of 1838), the term "actual military service" means, field service, the Legislature evidently never contemplating the exemption of all military men. *In the goods of De Bude*. 17th Nov. 1843. 1 Fulton, 337.

4. The construction put on the 7th Section of the Indian Wills Act (Act XXV. of 1838) is the same as that put on the 9th Section of the English Act, notwithstanding the omission of the words "shall attest" in the Indian Act. *In the goods of Sir W. Casement*. 8th July 1844. 1 Fulton, 463.

3. *Act* xix. *of* 1841.

5. Motion was made, under the 20th Section of Act XIX. of 1841, that the brother of a deceased should be appointed curator of the estate and effects. The affidavits on which the motion was grounded stated that the deceased left a will which his widow sought to suppress, that the brother was named executor therein, and that the widow was in possession and wasting the property. Held, that the case did not come within the Act. *In the goods of Hurrohistno Paul*. 24th Oct. 1842. 1 Fulton, 83.

6. Section 20. of Act XIX. of 1841 does not apply to a case where the affidavits do not shew the possession of the estate and effects of the deceased is wrongful, and not merely disputed. *In the goods of Sreemutty Okilmoney Dossee*. 7th Nov. 1842. 1 Fulton, 90.

7. Nor unless it be shewn that there is danger of waste or misappropriation of the property; and such danger will not be inferred merely from a dispute as to the succession. *In the goods of Shaik Nathoo*. 24th July 1844. 1 Fulton, 483.

8. *Quære*, As to the meaning of the term "succession" in Act XIX. of 1841? *Ib.*

4. *Act* xx. *of* 1841.

9. Act XX. of 1841 of the Indian Government does not apply to the case of defendants. *Mirzahee Begum* v. *Fuzlul Curreem and another*. 8th Feb. 1841. 1 Fulton, 406.

10. Under Act XX. of 1841 administration need not be taken out before action brought by a plaintiff suing as representative of a deceased

Muhammadan. *Shaik Punchoo* v. *Shaik Mungloo.* 13th Feb. 1844. 1 Fulton, 409.

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5. *Act* xxiv. *of* 1841.

11. Under Act XXIV. of 1841, the order for a conveyance to be made to the party beneficially interested will be absolute in the first instance. *In the matter of certain Deeds, &c., Driver to White, and in the matter of the Act* xxiv. *of* 1841. 1st July 1844. 1 Fulton, 488.

ACTION.

I. In the Supreme Courts.

1. *By and against whom maintainable,* 1.
2. *Notice of Action,* 6.
3. *Parties to Action,* 7.
4. *Limitation of Actions and suits.—See* Limitation, 1 *et seq.*
5. *Parties to suits.—See* Practice, 109 *et seq.*

II. In the Courts of the Honourable Company.

1. *By and against whom maintainable,* 10.
2. *For what maintainable,* 20.
3. *Abatement of Action,* 51.
4. *Limitation of Actions and Suits.—See* Limitation, 19 *et seq.*
5. *Parties to Suits.—See* Practice, 247 *et seq.*

I. In the Supreme Courts.

1. *By and against whom maintainable.*

1. Trespass is not maintainable against a Justice of the Peace for a distress for not paying an assessment for repairs of a road on the ground that it had not been in fact repaired. *Compton* v. *Gahagan.* 9th April 1812. 2 Str. 161.

1 *a.* Held, that under the 21st Geo. III. c. 70, s. 24. the Supreme Court has no jurisdiction to entertain a civil action for false imprisonment against a Provincial Magistrate acting in his judicial capacity, however irregular and illegal his act.[1] *Calder* v. *Halket.* 13th Nov. 1835. Mor. 179. (Grant, J., *dissent.*)

2. This judgment was affirmed on appeal, by the Judicial Committee of the Privy Council, when it was held that the 21st Geo. III. c. 70. s. 24. protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their judicial offices, does not confer unlimited protection, but places them on the same footing with those of English Courts of a similar jurisdiction, and only gives them an exemption from liability when acting *bonâ fide* in cases in which they have acted without jurisdiction. *Same* v. *Same.* 8th July 1840. Mor. 396. 3 Moore 28.

3. Trespass will not lie against a Judge for acting judicially, but without jurisdiction, unless he knew, or had the means of knowing, of the defect of jurisdiction; and it lies with the plaintiff, in every such case, to prove that fact. *Mirzahee Begum* v. *Fuzlul Curreem and another.* 8th Feb. 1841. 1 Fulton, 406.

4. A Muhammadan widow cannot sue her sons, as representatives of her deceased husband, at law, for the recovery of her marriage portion. *Ib.*

5. An action of trespass will not lie against the East-India Company, for acts legally done by a Superintendant of Police, under a warrant from the Governor in Council of Bombay. *Dhackjee Dadajee* v. *The East-India Company.* 13th Sept. 1843. Perry's notes. Case 9.

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2. *Notice of Action.*

6. Justices in the Conservancy

[1] A similar point was decided in *Hossein Ally* v *Chalmer* 2d Term, 1824, but the case is not reported.

Department of the Police are entitled to have one month's notice of an action being brought against them. *Harrowell* v. *Trower*. 17th July 1829. Cl. Ad. R. 1829, 54.

3. *Parties to Action.*

7. Semble, In an action to recover money due by the estate of a deceased Hindú, all the members of the family entitled to a share of such estate on partition should be made defendants. *Sreemutty Dossee* v. *Soodersen Sein and others*. 9th Nov. 1841. 1 Fulton, 397.

8. Semble, Unless an administrator or executor be appointed. *Ib.*

9. Where there are several co-plaintiffs who have been co-partners in trade, the warrant to sue on a partnership transaction need not be signed by all, but it is sufficient if it be signed by one plaintiff for "Self and partners." *Bates and others* v. *Feilden*. 24th June, 1844. 1 Fulton, 460.

II. In the Courts of the Honourable Company.[1]

1. *By and against whom maintainable.*

10. Where *A*, an indigo-planter, made advances to cultivators on engagements to deliver the whole of the indigo-plant produced, and *B*, another planter, seized the crops of the said cultivators, and was sued by *A* for damages; it was held, that the action brought by *A* against *B*, to recover damages, would not lie, but that *A* might sue the cultivators for a breach of engagement, and that the cultivators had their remedy against *B*. *Rouse* v. *Haig and others*. 26th June 1813. 2 S. D. A. Rep. 69.—Fombelle & Stuart.

11. Although a decree passed by the principal Collector of Malabar, previously to the introduction into that province of the judicial system pronounced by the Regulations of 1802, be a legal instrument under the provisions of sec. 47 of Reg. II. of 1803, yet where neither the appellant nor any of his predecessors (Colatery Rájahs) was a party to the suit wherein that decree was passed, though the appellant's particular family property was considered in it; yet as, at the period of passing that decree, the appellant had not attained the rank of Colatery Rájah, the Court held, reversing the decision of the Provincial Court, that such decree did not bar the institution of a suit to consider the appellant's claim in his rank of Rájah, and that it could not be regarded as having determined the rights of the Colatery Rájah. *Colatery Rajah of Colutnaad Cherical* v. *Cherical Ravee Vurma Rajah and others*. Case 9 of 1821. 1 Mad. Dec. 293.—Harris & Gowan.

11 *a*. So long as the wife of a banished Muhammadan remains his wife, and does not take measures to divorce herself, she is legally capable of maintaining an action for the recovery of debts due to her husband. *Mt. Noor Alum* v. *Shekh Buhadoor Shekh Muhmood*. 20th Dec. 1823. 2 Borr. 639.—Romer, Sutherland & Ironside.

12. *A* makes an usufructuary mortgage of certain lands to *B*, and some time after, alleging that the sum borrowed by him had been realized, with interest, from the profits, retakes possession. *B* sues *A* for dispossession, and while the case is pending sells his title to *C*, who, by the summary decision of the Court, obtains possession of the disputed lands, with mesne profits. Held, that one suit may be preferred by *A* against *C*, and the heirs of *B*, since dead, for

[1] In this section I have placed all the cases which relate to the practice of the Courts of the Honourable Company with regard to those by and against whom, and for what, an action is maintainable, in order to illustrate such practice as fully as possible. Many of the cases will be found under other titles.

redemption of the mortgage, mesne profits, and exemption from the summary award. *Ramnarain Mittor* v. *Kalee Das Rai and others.* 4th Dec. 1824. 3 S. D. A. Rep. 420.—Harington & Fombelle.

13. It was held, that a suit will not lie against a *Málik Muhaddam* with whom the decennial settlement was concluded in Bhaugulpore, for *Chakladárí* or *Chaudhari* rights or fees, as the *Potta* granted to a proprietor contains no stipulation for the payment of fees of this nature. *Munsurnath Chowdhry and others* v. *Bhowany Churn.* 20th Feb. 1826 4 S. D. A. Rep. 126.—Leycester & Dorin.

13*a*. It was held, that since the permanent settlement, a claim for *Mukaddamí, Chaudhari, and Chakladárí* dues will not lie against a *Zamíndár.* *Kulian Chowdhree* v. *Raja Ikbal Ali.* 19th Feb. 1827. 4 S. D. A. Rep. 215. —Leycester & Dorin.

14. Judgment of the Provincial Court in favour of *A*, who claimed an estate of *B*, was executed on the security of *C*, who stipulated to hold the estate and profits to abide the result of *B's* appeal. The Sudder Dewanny Adawlut reversed the judgment, and *B*, in execution of its decree, obtained an order to levy an adjusted award of mesne profits from *A* and *C*. After this *A* sued *C* on his acknowledgment of profits for two years, exceeding the sum awarded *B* for four years. *B* intervened and claimed the sum sued for. Held, that *A* is entitled to a judgment against *C*, who may set off judgments by him held for advances made to *A*; and *B*, by merely intervening, cannot obtain an award for excess of profit, but may bring a regular action. *Khw'aja Bagdesar* v. *Ghulam Hasan Ali and another.* 31st July 1832. 5 S. D. A. Rep. 218.—Rattray & Walpole.

15. Held, that a son born after a decree made cannot summarily get possession of property adjudged to his brothers and cousins, who were parties thereto, notwithstanding the opinion given by the *Pandit* of the Court, who declared such after-born son to possess equality of right with his brothers in the ancestral estate of his maternal uncle. But this was not to narrow his remedy by legal recourse to the institution of a regular suit. *Vijai Govind Barral and another, Applicants.* 30th December 1834. 1 Sev. Sum. Cases, 75.—D. C. Smyth.

16. The Circular Order of the 29th of July 1809, prohibiting the institution of suits under fictitious names, does not refer to the case of a plaintiff suing in his own name for the recovery of money lent by himself upon a bond executed in the name of another. *Beijnath Ghuttuk* v. *Fukeer Chund.* 19th Sept. 1836. 6 S. D. A. Rep. 109.—Rattray.

17. Held, that an action for arrears of rent against a large portion of the inhabitants of a village, who are in no otherwise connected with each other than as residents in the same village, and are not joint cultivators, is liable to be nonsuited. *Gour Chunder Pal and others* v. *Kha'jah Aleemoollah.* 25th Aug. 1842. 7 S. D. A. Rep. 112. — Lee Warner & Reid.

18. Held, that an action by a person as friend or next of kin to devisees under a will, who were minors, one of the executors under the will being alive, is irregular, and the suit was dismissed accordingly. *Brij Ruttun Doss* v. *Joakim Gregore Pogose.* 24th Nov. 1842. 7 S. D. A. Rep. 119.—Reid & Barlow.

19. A Hindú widow claimed a share of ancestral property, under an *Anumatí-patra* alleged to have been executed by her husband in behalf of the son whom she might adopt. Held, that until the adoption was made no action would lie; and that the expression of any opinion as to the authenticity of the deed was, in the present action, uncalled for. *Mt. Subudra Chowdryn* v. *Goluknath Chowdry and another.* 28th Dec

1843. 7 S. D. A. Rep. 143.—Tucker & Reid. (Barlow *dissent.*[1])

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2. *For what maintainable.*

20. A new suit will be admitted to supply an evident defect in a former decree. *Joogul Kishwor and others* v. *Radhakaunt Ghose.* 18th Aug. 1806. 1 S. D. A. Rep. 154.—Harington & Fombelle.

20 *a.* A claim by the appellant on the respondents for a sum of money alleged to have been embezzled by their ancestor from the ancestor of the appellant was dismissed, as the alleged embezzlement was disproved. *Oditnaraen Sing* v. *Casinath and others.* 24th April 1807. 1 S. D. A. Rep. 183.—H. Colebrooke & Fombelle.

21. *A* instituted a suit against *B*, a *Zamíndár*, for the recovery of a *Lákhiráj* village, and also for the recovery of certain *Men-cavil Mániyams* and *Rusúms* of two other villages, the produce thereof, and certain cattle thereon. The claim to the *Lákhiráj* property, and to the *Men-cavil Mániyams* and *Rusúms*, was declared, on evidence, to be unfounded, and the Court adjudged that the profits arising from private cultivation, and the cattle, alleged by *A* to have been unjustly seized by *B*, and avowed by the latter to have been taken in distraint for a balance of rent under the authority of ancient usage and the Regulations, should have been made the subject of a separate suit. *Anon.* Case 10 of 1811. 1 Mad. Dec. 45.—Scott & Greenway.

22. Where a party claimed a moiety of an estate as his by inheritance; it was held, that his claim was not precluded from cognizance by an incidental judgment against him in another suit, such judgment containing no distinct decision respecting his proprietary right to the moiety in dispute. *Shekh Bhukaree* v. *Imambuksh.* 5th Nov. 1811. 1 S. D. A. Rep. 355.—Harington and Stuart.

23. Where a person pleaded two previous decrees in his favour as barring the present action, the plea was overruled on its appearing that the decisions pleaded did not affect the merits of the present action. *Buldeo Sircar* v. *Rajah Nurnarayun Rai.* 4th Mar. 1813. 2 S. D. A. Rep. 49.—H. Colebrooke.

24. In a suit for possession of lands, and for profits during dispossession, it was held not to be necessary that the annual produce and profits during dispossession should each exceed the sum of Rs. 5000 to make the suit originally cognizable in the Provincial Court, but only that the aggregate amount of both should exceed that sum.[2] *Nubkishore Bunhoojea* v.

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[1] Mr. Barlow would have dismissed the appeal of the appellant (the widow), and have passed judgment on the validity or otherwise of the *Anumati patra*, considering that the Courts were bound to give their opinion on the documents on which the plaintiff's claim was founded, and referring to the case of *Mt. Himulta Chowdrayn* v. *Mt Puddoo Munee Chowdrayn* 4 S. D. A. Rep. 19, where the question as to the validity of the *anumati-patra* was gone into. There seems to be no doubt but that in both these cases the permission to adopt was never granted, otherwise the widows would have exercised their authority. The decision in this case places a salutary check upon such unfounded allegation, and overrules the case of *Mt. Himulta* v. *Mt. Puddoo.*

[2] Subsequently, however, in reply to a reference from the Commissioner of Cuttack, the Court determined, on the 29th Sept. 1820, that in suits for *Málguzári* estates distinctly assessed with the Government revenue, or for specific portions of such estates, the rule of estimating the value, and determining the form in which the suits are triable, should be the *Sudder jama* alone (as laid down in Reg. I. of 1814), distinct from mesne profits; and that the Court which adjudges the proprietary right to the estate, may, at the same time, add an order for the mesne profits to be accounted for (where there exists no doubt of their being due), without regard being had to their amount, and without its being considered that the amount, either of the mesne profits, or of those added to the valuation of the estate, affects the Court's jurisdiction. In the event,

Hyder Buhsh. 30th Aug. 1814. 2 S. D. A. Rep. 125.—Harington and Fombelle.

25. According to the spirit of Sect. 2 and 3 of Reg. XIII. of 1808, when a person brings a suit for land or other immoveable property, and also for money or other moveable property, the aggregate amount of both descriptions of property is to be considered as the cause of action. *Ib.*

26. *A* sued *B* for the value of certain timber, consigned to *B* by *C*, under a power of attorney granted to *A* by *C*. *A* admitted that the actual property in the timber vested in *C*, subject to a mortgage which *A* alleged he had upon it. Pending the suit, *C* died; and on appeal, the Court, reversing the decision of the Provincial Court, held that *A*'s authority ceased on the death of *C*, and could be renewed only by the act of *C*'s representatives. This judgment having the effect of a nonsuit in an original action, it was open to *A* to sue *B* for the recovery of any claim he might have upon the timber, and the like course could be taken by the representatives of *C*. *Soobbiah and another* v. *Nagamully Venkiah.* Case 22 of 1817. 1 Mad. Dec. 194.—Scott and Greenway.

27. In a suit between two parties, judgment in favour of one of them was held not to bar the claim of government, not a party to the suit, to the lands affected by that judgment. *Joanna Fernandez* v. *Domingo de Silva.* 12th Feb. 1817. 2 S. D. A. Rep. 227.—Harington and Fombelle.

28. A Muhammadan, filing a suit for the recovery of his share of an hereditary office, and dying shortly afterwards, the Court, under the opinion of the law officers, allowed the suit to be carried on by his widow, having a son, a minor, then living. *Mt. Humeedoon Nisa* v. *Ghoolam Moheeood Deen Chowdree.* June 1819. 2 Borr. 33.—Sutherland.

29. Four years after the date of a decree for money, the holder of the decree sued out execution against the grandson of the person against whom the decree was given. As the case involved a point of Hindú law, as to the liability of the property for the debt, which could not be properly determined on a summary suit, the decree holder was referred to a regular suit, to prove the liability of the person against whom he claimed the amount adjudged. *Govind Chund* v. *Nundanund Sing.* 20th Aug. 1819. 2 S. D. A. Rep. 308.—Rees & Goad.

30. Part of a debt having been realized by the process of the Supreme Court, and the action having been discontinued, it was held to be still competent to the complainant to sue for the remainder in a Provincial Court, though the claim to be reimbursed for costs of suit incurred in the former Court would be rejected. *Munoher Lal* v. *Ramnarain Ghose.* 16th Jan. 1821. 3 S. D. A. Rep. 66.—C. Smith.

31. In a dispute respecting the boundary of two estates, situated in different Zillahs, it was held that the summary award of one Court is insufficient to render the contested lands exclusively subject to its jurisdiction, and to invalidate, under Sect. 8. of Reg. III. of 1793, a regular suit, which the party cast may institute in the Court of the Zillah within which he maintains them to be situated. *Ladlee Mohun Thakoor* v. *Iswar Chunder Pal.* 15th Dec. 1823. 3 S. D. A. Rep. 282.—Harington & Leycester.

32. A suit founded on a claim of inheritance having been dismissed, it is not competent to the Courts to entertain another action by the same in-

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however, of doubt existing as to the right to mesne profits, or alleged collections, however denominated, it would be necessary that a separate suit should be brought for them in the Court of which the jurisdiction would belong, according to the amount demanded. *Mutatis mutandis*, a similar rule would hold in suits for *Lákhiráj* lands. Reg. I. of 1814 has been since rescinded by Sect. 2. of Reg. X. of 1829.

dividual, on the same grounds, though the person sued and the amount claimed be different. *Seam Begum and others* v. *Ghalib Jung Khan and others.* 13th April 1824. 3 S. D. A. Rep. 335.—Smith & Ahmuty.

33. It was held, that a claim against a party in possession to certain alluvial lands, and a claim against an *Ameen* to the profits realized while the lands were under attachment by him, may be preferred in the same action. *Rawkishen Rai and another* v. *Gopee Mohun Baboo.* 26th April 1824. 3 S. D. A. Rep. 340.—Harington.

34. Punishment for a misdemeanour (as, for instance, desertion from a ship with a boat) does not bar the civil remedy of the owner; and those concerned in the act are jointly and severally liable. *Jivan Sarang* v. *Benfield Paine.* 6th Jan. 1830. 5 S. D. A. Rep. 1.—Turnbull.

35. *A* sued *B* and *C* for a real estate, on an alleged breach of a covenant[1] by *B*, and defect of *C*'s title, which had been recognised by *B*; but during *B*'s life, *A*, by the Hindú Law, could have no right to enter. *B* died during the litigation, and the Sudder Dewanny Adawlut adjudged to *A* part of the interest held by *B*, which had in the meantime become vested in *A*, as joint heir, notwithstanding defect of any immediate right of entry at the time of claim. *Babu Sheo Manog Singh* v. *Babu Ram Prakas Singh.* 25th Sept. 1831. 5 S. D. A. Rep. 145.—H. Shakespear & Turnbull.

36. Where *B* and *C* impugned as illegal a gift by *A* to *D*, made several years before his death, it was held, that on *A*'s death *B* and *C* might recover by suit the object of such illegal gift, their right then accruing, so that there was not adverse possession during the lifetime of *A*, nor waiver of claim on the part of *B* and *C*, by previous omission to sue. *Jivan Lál Singh and others* v. *Ram Govind Singh and another.* 24th Jan. 1832. 5 S. D. A. Rep. 163.—Rattray.

37. A decree given against a proprietor who has purchased at a public sale for arrears of revenue, and awarding the right of possession to a party who claims to hold an under tenure at a fixed rent, is no bar to an action by the proprietor to establish his right to an increase of rent.[2] *Doorgapershad* v. *Clementi.* 2d Aug. 1837. 6 S. D. A. Rep. 179.

38. Held, that the institution of an inquiry into a plea of fictitious purchase, made after judgment passed, by a party to the suit, constitutes a new cause of action under Sect. 4 of Reg. V. of 1798, and cannot be looked upon as carrying out the original intentions of the Court passing the decree. *Bakshu Bay* v. *Taij Singh and others.* 13th June 1840. 1 Sev. Sum. Cases, 15.—D. Smyth, Tucker, & Lee Warner. (Rattray *dissent.*)

39. A summary judgment under Cl. 7. of Sect. 7. of Reg. XVIII. of 1817 is not open to any further regular suit. *Turnee Parshad Nayarutna Bhuttacharjya, Applicant.* 19th June 1840. 1 Sev. Sum. Cases, 21.—D. C. Smyth.

40. In an action, founded on right by inheritance, for possession of the estate, real and personal, of a party deceased, the Zillah Court gave judgment in regard to the real estate, and referred the plaintiff to a separate suit for the personal property; held, that as the action was brought for the recovery of the entire estate, both real and personal, the order was against the practice of the Courts, and that the Lower Court should have decided on the merits of the entire claim, and the case was referred back accordingly. *Mt. Ramdhun Dibbea* v.

[1] It does not appear, from the report of this case, what was the tenor of the covenant therein mentioned.

[2] Under Act. XII. of 1841, Sect. 27, the question of the right of occupancy in the holder of the under tenure, apart from that of his liability to the demand of an increase of rent, could not have arisen.

Roodernerain Chowdree and others. 10th Feb. 1841. 7 S. D. A. Rep. 15. —Reid.

41. A decree of a Court of competent jurisdiction, in an action for foreclosure of a mortgage against the alleged heir, in possession of the property of the deceased mortgagor, was held to be no bar to the recovery of the property awarded by the decree on a suit instituted by the rightful heir. *Rajah Kishen Chunder and another* v. *Mahanund Roy.* 15th Feb. 1841. 7 S. D. A. Rep. 16.—Tucker & D. C. Smyth. (Dick *dissent.*)

42. In an action brought for the possession of certain *Málguzárí* lands, not bearing a defined *Jama*, the value of the lands had been computed at the rate of an arbitrary *Jama* fixed upon by the plaintiff; held, that the plaintiff should have sued at the estimated selling price of the land, instead of fixing a *Jama* himself, and he was accordingly nonsuited; permission, however, being granted for him to sue *de novo.* *Lal Purmessur Buksh Singh* v. *Rajah Ooodwunt Purkash Singh.* 16th Feb. 1841. 7 S. D. A. Rep. 19.—Lee Warner & D. C Smyth.

43. Construction No. 1129 was held to bar the institution of a regular suit in a case of dispute, arising in the execution of a decree in regard to mesne profits and other matters involved in the original decision of the case. *Sheogholam Singh* v. *Sultan Singh.* 12th June, 1841. 1 Sev. Sum. Cases, 139. 7 S. D. A. Rep. 35.—D. C, Smyth & Barlow.

44. But it was also held, that an action by the late proprietor of an estate to set aside a sale made in execution of a decree (an application to reverse which has been summarily rejected under the provisions of Sect. 5. of Reg. VII. of 1825 by the Courts of original and appellate jurisdiction), is not barred, either by the terms of that Section, or by the rule of Construction No. 1129. *Ib.*

45. Property sold to realize a debt due to the decree holder, and pointed out subsequently to, and in execution of, a decretal order of Court for balance of account, creates a new cause of action. The validity or invalidity of such sale was held not to be involved in, or to affect, the judgment passed in the original cause, and may be the subject of a separate suit. *Ib.*

46. Where, in an action by a landholder for recovering rent-free lands, the suit was laid at one year's produce, instead of at the value prescribed for suits regarding rent-free lands, the plaintiff was nonsuited under Construction 576, dated 1st Oct. 1830, with leave to sue *de novo.* *Ram Tunnoo Mundul* v. *Gunganarain Bonnerjee and others.* 16th June 1841. 7 S. D. A. Rep. 37.—Lee Warner & Barlow.

47. The fact of the quantity of land comprised in a certain parcel for which the plaintiff sued, with mention of its boundaries, being somewhat in excess of that mentioned in the petition of plaint, was held to be no bar to the recovery by the plaintiff of the entire parcel, the right of ownership in the parcel being the real subject of dispute, and not merely the quantity of land comprised in it. *Ajaib Singh and others* v. *Hajee Begum.* 23d June 1841. 7 S. D. A. Rep. 39.—Rattray & D. C. Smyth.

47 *a.* A money action will lie where a mortgagor fails to fulfil a condition mutually agreed on between him and the mortgagee, of transferring the mortgaged property to the occupancy of the mortgagee, and the mortgagee is entitled to recover both principal and interest. *Rajah Gopal Surn Singh* v. *Martindell.* 27th Sept. 1841. 7 S. D. A. Rep. 47.—Tucker, Lee Warner, & Barlow.

48. A decree of foreclosure of a mortgage does not bar inquiry into the claim of a claimant, not a party to the suit, for recovery of the property. *Futteh Singh and others* v. *Bikramajit Singh.* 9th March, 1842. 7 S. D. A. Rep. 76.—Tucker & Reid.

49. A suit for property, real and

personal, in right of inheritance, having been adjusted by *Rázínámeh* and *Safínámeh*, between the parties; it was held, that such adjustment did not bar an action by the same plaintiff against the same defendants for his share of certain ancestral property alleged to have been fraudulently concealed by the latter at the time of the adjustment. *Casheenath Mookerjee* v. *Prawnkishen Mookerjee.* 14th Sept. 1843. 7 S. D. A. Rep. 131.—Tucker & Barlow.

50. An acquittal on a criminal charge is not a sufficient plea to a civil action for damages grounded on the same transactions. *Mt. Sidhisree Debea and others* v. *Wise.* 30th Nov. 1843. 7 S. D. A. Rep. 136.—Tucker, Reid, & Barlow.

3. *Abatement of Action.*

51. Where separation has taken place between two brothers, and one of them dies, the survivor cannot continue to prosecute a suit commenced by the deceased brother for the recovery of property from his son's widow, since she is his heiress. *Juvehur Tilukchund* v. *Phoolchund Dhurmchund.* 5th Feb. 1824. 2 Borr. 616.—Romer, Sutherland, & Ironside.

ADDING SIMILITER. — See PRACTICE, 82, 83.

ADDITIONAL INTERROGATORIES.—See PRACTICE, 182.

ADMINISTERING POISONOUS OR DELETERIOUS DRUGS.—See CRIMINAL LAW, 53 *et seq.*

ADMINISTRATION.—See EXECUTOR, *passim*; JURISDICTION, 190 *et seq.*

ADMINISTRATION BOND.—See EXECUTOR, 46. 46 *a.*

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ADMISSION AND APPOINTMENT OF ATTORNEYS.—See ATTORNEY, 1 *et seq.*

ADOPTION.

I. HINDÚ LAW.
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I. HINDÚ LAW.

1. *The Qualification and Right to Adopt.*

1. The consent of a husband is indispensable to enable his widow to adopt a son after his death.[1] *Veera-*

[1] There is, however, some difference of opinion amongst the Hindú lawyers as to the absolute necessity of the husband's consent. By the doctrine of the Bengal school it is undoubtedly indispensable.—Datt. Mim.

permal Pillay v. *Narrain Pillay.* 5th Aug. 1801. 1 Str. 91.

2. And the same was held in the case *Mt. Tara Munee Dibia* v. *Dev Narayun and another.* 10th July 1824. 3 S. D. A. Rep. 387.—Shakespear.

3. A widow may adopt a son with the consent of her husband or of her relations. *Ranee Sevagamy Nachiar* v. *Streemathoo Heraniah Gurbah.*[1] Case 18 of 1814. 1 Mad. Dec. 101. —Scott, Greenway, and Stratton.

4. According to the law as current in Benares, an adoption made by a widow without authority from her husband is illegal[2], although she may have obtained the consent of her husband's heirs. *Raja Shumshere Mull* v. *Ranee Dilraj Konwur.* 31st Jan. 1816. 2 S. D. A. Rep. 169.—Harington & Fombelle.

5. A widow may legally adopt a son without consent of her husband, if she have obtained permission of the Cast and the sanction of the ruling powers.[3] *Sree Brijbhookunjee Muharaj* v. *Sree Gokoolootsaojee Muharaj.* 5th Nov. 1817. 1 Borr. 181. —Sir E. Nepean, Nightingall, and Bell.

6. And having obtained such permission, must adopt the nearest of kin to her late husband[1]; but if there should be two persons equally near, she may adopt either. *Ib.*

7. A widow is competent to adopt, even without the injunction of her husband, the son of her husband's brother; and he thereupon succeeds to the property of her late husband. But she cannot adopt any other but her husband's brother's son during his existence; nor, as it appears, can she adopt any other but such son without the consent of her husband.[5] *Huebut Rao Mankur* v. *Govind Rao Bulwunt Rao Mankur.* 1st Sept. 1823. 2 Borr. 75.—Barnard.

8. Held, that by the law applicable to Behar, permission of the husband is necessary to legalize adoption by his widow in the *Dattaka* form, and that leave from her husband's kindred will not be sufficient. *Jai Ram Dhami and others* v. *Musan Dhami.* 14th Jan. 1830. 5 S. D. A. Rep. 3. —Sealy & Rattray.

9. The Jain Shastra authorizes a widow to adopt a son without the sanction of her husband. *Maharaja Govindnath Ray* v. *Gulal Chand and others.* 23d March 1833. 5 S. D. A. Rep. 276.—H. Shakespear & Walpole.

10. An adoption by a widow after her husband's death, without any authority from him, was held to be invalid in the Zillah of Etawa, in provinces ceded by the Nabob of Oude in 1801. *Raja Haimun Chull Sing* v. *Koomer Gunsheam Sing.* 4th Jan. 1834. 2 Knapp, 203.

11. The adoption made by a widow, without authority from her husband, (the *Anumati-patra*, or deed of permission exhibited by her, as granted by her husband, appearing to have been fabricated,) was declared to be

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s. i. 15. 3 Coleb. Dig. 242. 2 Str. H. L. 84. 92. 96. 1 Macn. Princ. H. L. 66. 2 Do. 175. 182. 189. Macn. Cons. H. L. 125. 155. 158. Colebrooke says that the followers of the Mitácshará in the Benares and Maharashtra schools admit the widow's power of adoption without authority from her husband, if she have the sanction of his kindred.—Mit. c. i. s. xi. 9, note. 1 Str. H. L. 79. 2 Do. 92. 96. 115. Steele 54. 188. and App. A. 32. May. c. iv. s. v. 17, 18. According to the Mithila school, a *Kritrima* son may be adopted by the widow without her husband's authority, but he does not inherit to the husband.—Suth. Synop. note v. 222. 2 Str. H. L. 204. 2 Macn. Princ. H. L. 196.

[1] The unsuccessful party in this suit subsequently appealed to the King in Council; who, on the 28th of April 1828, affirmed the decision of the Sudder Adawlut.

[2] In this case the Pandits declared that the authority of the Dattaka Mímánsá supersedes the Viromitrodaya and other works which substitute the permission of kin for the assent of the husband, in case of a widow's adoption. The same view of the Benares law is taken by Macnaghten.—See 2 Princ. H. L. 189.

[3] May. c. iv. s. v. 17, 18. A wife can only adopt under her husband's consent during his lifetime. Steele, 54. 188.

[4] Datt. Chan. s. i. 10. May. c. iv. s. v. 19.

[5] May. c. iv. s. v. 17, 18, 19.

of no effect against a testamentary deed executed by the husband in favour of his younger brothers, whereby his share of the joint estate was bequeathed to them after the death of the widow, with a declaration that he had not given her permission to adopt a son.[1] *Janki Dibeh* v. *Suda Sheo Rai.* 17th July 1807. 1 S. D. A. Rep. 197.—Harington & Fombelle.

12. A Hindú widow claimed a moiety of an ancestral estate as heir to her deceased husband, who had given her, as she alleged, an *Anumatí-patra*, which, however, she had never exercised. The Court, considering that the *Anumatí-patra* was altogether unworthy of credit, as no mention had been made of it by the widow for twenty-two years after her husband's death, dismissed the claim of the widow, and declared that she was only entitled to maintenance, her husband having died during the lifetime of his father and brothers.[2] *Mt. Himulta Chowdrayn* v. *Mt. Puddoo Munee Chowdrayn.* 14th Feb. 1825. 4 S. D. A. Rep. 19. — C. Smith & Martin.

13. Held, that there may be two successive adoptions, under due authority for that purpose, by the widows of the same man.[3] *Shamchunder and another* v. *Narayni Dibeh.* 21st Aug. 1807. 1 S. D. A. Rep. 209.—H. Colebrooke & Fombelle.

14. Authority given to a wife to adopt, in the event of disagreement between her and the son of her husband then living, will not avail. But, Semble, the authority to adopt in the event of the son's death would be valid. *Mt. Solukhna* v. *Ramdolal Pande and others.* 27th May 1811. 1 S. D. A. Rep. 324.—Harington.

15. *Quære*, Whether a Hindú, having a son of his body, can, in any case, authorise the adoption of a son during the life of such son of his body? *Ib.*

16. A Hindú having properly adopted a son, cannot disinherit him, even for bad behaviour, nor can he adopt another son. *Daee* v. *Motee Nuthoo.* 6th Oct. 1813. 1 Borr. 75. —Nepean, Brown, & Elphinston.

17. But should a man take another for the purpose of adoption, and change his mind before the full performance of the ceremony for adoption, he is at liberty to put him aside, and to adopt any other whom he may choose. *Ib.*

18. A childless Hindú, having two wives, gives permission to each of them to adopt a son. After having himself adopted a son on behalf of his senior wife, he confirms the permission originally given to his second wife. Held, that an adoption by her, after her husband's death, is valid.[4]

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[1] It is to be observed, that in this case instructions were given to the Zillah magistrate for bringing to trial the persons concerned in the forgery of the deed exhibited by the appellant, and in endeavouring to support its authenticity by perjury.—Macn.

[2] In this case the widow was held not to be qualified to adopt, as the *Anumatí-patra* was unworthy of credit; but in a subsequent case (*Mt Subudra Chowdryn* v. *Goluknath Chowdryn and another*, 7 S. D. A. Rep. 143), where there was an alleged *anumuti-putr*, and the widow had not adopted a son under its authority, the Court refused to express any opinion as to the authenticity of the deed, and held, overruling this case, that, until the adoption was made, no action would lie for the widow's share.

[3] This was a case of successive adoption, the first having failed by death before the second took place. It rested on separate authority given by the husband to his second wife. But instances have occurred in which a widow has made a second adoption on the failure of the first by death, in fulfilment of a single injunction or authority from her husband, the object of such injunction being unattained unless the child live. But the validity of a second adoption while another son, whether by birth or adoption, is living, would be a distinct question, on which writers of eminence have disagreed. Jagannátha, in his Digest (3 Coleb. Dig 295.), inclines to hold it valid. But the author of the Dattaka Mimánsá maintains the contrary opinion.—Datt Mim. s i. 6. 2 Str. H. L. 85. Steele, 52. 185. 2 Macn. Princ. H. L. 200. Macn. Cons. H. L. 146.; but see Do. 157.

[4] Macn. Cons. H. L. 181. The decision in this case seems, in a great degree, to

Goureepershad Rai v. *Mt. Jymala.* 12th Dec. 1814. 2 S. D. A. Rep. 136.—Harington.

19. But Semble, if, after such first adoption on behalf of his senior wife, the husband had not confirmed the permission to the second, the adoption by her after his death would have been invalid; because if a person giving permission, afterwards himself does the thing permitted, the permission given to another becomes by his act void. *Ib.*

20. By the law as current in the provinces subject to the Madras Presidency, a person having adopted a son, and subsequently married a second wife, and in conjunction with her adopted another son, the first being still alive, it was held that such second adoption was valid. *Rungamah* v. *Atchummah and others.*[1] Case 11 of 1827. 1 Mad. Dec. 521.

21. A Hindú cannot adopt a son, he having already an adopted son, and a son born. *Yachereddy Chinna Bassapa and others* v. *Yachereddy Gowdapa.* 4th Dec. 1835. 3 P. C. Cases, Case 5.

22. If a Hindú by will express a wish to be represented by the unborn son of a particular person, who has but one at the time, and who has no other living at the death of the testator, his widow is not bound to wait indefinitely the birth of a second for the purpose of adoption under her husband's will; but may, without waiting, adopt any competent person she thinks proper. *Veerapermall Pillay* v. *Narrain Pillày and others.* 5th Aug. 1801. 1 Str. 91.

23. A power of adoption granted by a Hindú to his wife may be exercised by her at any time after her husband's death. And where a Hindú widow adopted a son fifteen years after her husband's death, according to instructions received from him during his lifetime, it was held that such adoption was good, and the adopted son entitled to the inheritance.[2] *Anon.* 24th March 1814. East's Notes, Case 10.

24. A Hindú widow having received authority from her husband during his lifetime to adopt a son, may adopt any stranger without restriction, even though the son of a deceased daughter of the husband be living at the time of his death. *Ib.*

25. A Hindú widow can adopt a child not in existence at the time of her husband's death, she having received authority from him to adopt a son. *Ib.*

26. It is not necessary that a written authority be given by a Hindú to entitle his widow to adopt a son: a verbal authority is sufficient[3]; but such verbal authority must be proved by witnesses, the widow's testimony alone not being sufficient.[4] *Ib.*

27. The same point was decided in *Ranee Sevagamy Nachiar* v. *Streemathoo Heraniah Gurbah.*[5] Case 18 of 1814. 1 Mad. Dec. 101.—Scott, Greenway, & Stratton.

28. The consent of the husband to an adoption by his widow may be given in writing; and if the handwriting be proved to be his, the signature of witnesses (to the deed) is unnecessary: otherwise it must be signed by witnesses. *Ib.*

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have turned on the obviousness of the adopting father's desire to have many sons.

[1] This decree is now in appeal before the Judicial Committee of the Privy Council. The Pandits referred to by the Sudder Adawlut argue ingeniously, that neither the Dattaka Mímánsá nor the Dattaka Chandrika expressly forbid two successive adoptions; but that, on the contrary, from their provisions with respect to a man with only one son of his body (Datt. Mím. s. iv. 8. s. i. 8. 12. s. iv. 20. Datt. Chan. s. v. 8, 9), it is to be inferred that a man with such only son may adopt a son; and consequently, as there is in reality no difference between a real and an adopted son, and no express prohibition, successive adoptions are legal. In support of this doctrine they refer to the Vijnyánéswara Vyakhyana, and the Suraswativilása, as explanatory of the Dattaka Mímánsá and the Dattaka Chandrika.

[2] Macn. Cons. H. L. 157.

[3] 1 Str. H. L. 80. 93. 2 Do. 95.

[4] 2 Macn. Princ. H. L. 183.

[5] See *supra*, p. 13. note 1.

29. The consent may be given by a writing, either mentioning the name of the child to be adopted and of the parents of the child, or leaving the child to be afterwards fixed upon. *Ib.*

30. If a man and wife have agreed in writing to adopt a child, and one of them afterwards die, the survivor must fulfil the engagement. The agreement is not rendered void by the death of one of the parties. *Ib.*

31. If the husband at the time of his death refer to such an agreement, the wife is authorised thereby to adopt the child mentioned in the agreement. *Ib.*

32. If a Hindú widow, asserting that she had received permission from her husband to adopt a son, shall make such adoption, and the granting of such permission be not supported by any other proof than her assertion, the Court will not hold such adoption valid. *Mt. Tara Munee Dibia* v. *Dev Narayun and another.* 10th July 1824. 3 S. D. A. Rep. 387.—Shakespear.

33. Where a Hindú widow was authorised by her late husband to adopt an individual named, or, in the event of any bar to his affiliation, any other Brahman's son, and the individual named was adopted by her and died some years afterwards, it was held that she was incompetent, under the terms of the authority given, to make a second adoption, because the *Anumatí-patra* gave her authority in a specific case, making the general authority contingent on its non-performance.[1] *Purmanund Bhuttacharuj* v. *Oomakunt Lahoree and others.* 18th Nov. 1828. 4 S. D. A. Rep. 318.—Rattray.

34. An alleged *Dattaka* adoption by a person in a state of insensibility from dangerous illness, by a verbal declaration, and without performance of the prescribed ceremonies, was held to be illegal and invalid. *Bullubkant Chowdree* v. *Kishenprea Dassea Chowdrain.* 16th Jan. 1838. 6 S. D. A. Rep. 219. — Money & Harding.

35. Where *A* sued *B* for a share of an estate inherited by the latter in virtue of adoption, on grounds that adoption by a *Bramachárí*, or bachelor, was invalid, it was held that the right of bachelors to adopt rested on local usage.[2] *Gunnapa Deshpandee* v. *Sunkapa Deshpandee.* 16th July 1839. Sel. Rep. 202. — Giberne, Pyne, and Greenhill.

36. Although a father may by will postpone his son's majority beyond the age of sixteen years, so as to prevent such son, whilst under such appointed age, from adopting an heir to succeed to the testator's property; yet, Semble, the father has no power to limit his son's general right to adopt an heir. *Ranee Hurrosoondery* v. *Cowar Kristonauth Roy.* 7th Feb. 1841. 1 Fulton, 393.

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2. *The Qualification and Right to be Adopted.*

37. It is not necessary that the person adopted by a widow after the death of her husband should have been named by him. It is sufficient that she had his authority to adopt, express or implied. His authority for the purpose is indispensable. *Veerapermall Pillay* v. *Narrain Pillay.* 5th Aug. 1801. 1 Str. 91.

38. The adoption of an eldest or only son is improper, but not invalid.[3] If a man have two wives, and by the first one son, and by the second several, the elder of those by the younger wife may be given and received in adoption. *Ib.*

39. The adoption of an only son is valid, but both giver and receiver in-

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[1] Macn. Cons. H. L. 156.

[2] Sutherland doubted the validity of an adoption by a bachelor; but he inclines to the affirmative of the question —Synop. 212.

[3] 3 Coleb. Dig. 243. Mit. c. i. s. xi. 12. 2 Str. H. L. 105 Dat. Mim. s. iv. 1 et seq Dat. Chan. s. i. 29. s. iii. 17. Steele, 51. 184. App. A. 29. 2 Macn. Princ. H. L. 182. Macn. Cons. H. L. 126. 147.

cur sin. *Ib. Case of the Rajah of Tanjore.* Cited in 1 Str. 126.

40. According to the law as current in Benares, the adoption of an only son is invalid, unless the natural father deliver his son to the adoptive father on the condition that he should belong to both of them as a son, and the latter accept and adopt him on that condition, in which case he becomes the *Dwyámushyáyana*, or son of both fathers.[1] *Rajah Shumshere Mull* v. *Ranee Dilraj Konwur.* 31st Jan. 1816. 2 S. D. A. Rep. 169. —Harington and Fombelle.

41. An only son cannot be legally given or received in adoption; therefore it is not lawful for a man to adopt the only son of his brother in preference to the youngest son of his paternal uncle. But if such an adoption should take place, although both the giver and receiver in adoption have thereby committed sin, the adoption is valid. *Arnachellum Pillay* v. *Iyasamy Pillay.* Case 5 of 1817. 1 Mad. Dec. 154.—Scott, Greenway, & Ogilvie.

42. According to the law as current in Behar, an only son cannot be given or received in the *Dattaka* form of adoption.[2] *Nundram and others* v. *Kashee Pande and others.* 30th June 1823. 3 S. D. A. Rep. 232. —Leycester and Dorin.

43. Semble, Though the adoption of an only son is criminal, such adoption once made cannot be set aside.[3] *Nundram and others* v. *Kashee Pande and others.* 30th June 1825. 4 S. D. A. Rep. 70.—Harington & Martin.

44. No man should give or accept an only son in adoption, nor, though a numerous progeny exist, should an eldest son be given; for he chiefly fulfils the office of a son.[4] *Debee Dial and another* v. *Hur Hor Singh.* 29th Dec. 1828. 4 S. D. A. Rep. 320.—Leycester.

45. An only son being once adopted, the adoption is valid, even after tonsure; the presumption being, that the agreement between the natural and adoptive father was that he should become *Dwyámushyáyana*, and if so the son might be adopted without blame. A sacrifice to fire will undo the effects of tonsure in the house of the natural father.[5] *Sreemutty Joymony Dossee* v. *Sreemutty Sibosoondry Dossee.* 28th March 1837. 1 Fulton 75.

46. The adoption of a married boy is illegal.[6] *Ranee Sevagamy Nachiar* v. *Streemathoo Heraniah Gurbah.*[7] Case 18 of 1814. 1 Mad. Dec. 101.—Scott, Greenway, & Stratton.

47. Semble, A man of mature age, married, and having a family, is admissible to be adopted, he being a *Sagotra.*[8] *Sree Brijbhookunjee Muharaj* v. *Sree Gokoolootsaojee Muharaj.* 5th Nov. 1817. 1 Borr. 181. —Sir E. Nepean, Nightingall, & Bell.

48. An adoption of a married man twenty-eight years old, though of the Súdra Cast, was held to be invalid, an adoption after marriage being illegal and void. *Chetty Colum Prusunna* v. *Chetty Colum Moodoo.* Case 7 of 1823. 1 Mad. Dec. 406. —Cochrane & Gowan.

49. According to the law as current in Mithila, a brother cannot be adopted by a brother.[9] *Baboo Runjeet Sing* v. *Baboo Obhye Narain Sing.* 26th July 1817. 2 S. D. A. Rep. 245.—Ker & Oswald.

50. Held, that according to the

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[1] Datt. Mim. s. vi. 41. Datt. Chan. s. ii. 34. s. iii. 17. 2 Macn. Princ. H. L. 193.

[2] 2 Macn. Princ. H. L. 179.

[3] 1 Str. H. L. 87.

[4] Mit. c. i. s. xi. 11, 12. Macn. Cons. H. L. 126, 146.

[5] 1 Str. H. L. 91.

[6] 1 Str. H. L 91. 2 Do. 87. Steele 183. Macn. Cons H. L. 141.

[7] See *supra*, p. 13, note 1.

[8] May. c. iv. s. v. 19.

[9] Datt. Mim. s. v. 16. 1 Str. H. L. 83. The authorities cited by the law officers in this case had relation to the *Dattaka* form of adoption. In the Dwaita Parishista it is declared that in the *Kritrima* form a man may adopt his own brother, or even his own father.—1 Macn. Princ. H. L. 76.

law as current in Mithila, while a brother's son exists, the adoption of any other individual as a son, either in the *Dattaka* or *Kritrima* form of adoption, is illegal.[1] *Ooman Dutt* v. *Kunhia Singh.* 15th April 1822. 3 S. D. A. Rep. 144.—Dorin.

51. The adoption by a widow of a son of her husband's brother is legal, even if performed without her husband's injunction, and no other person can be adopted by her while he exists.[2] *Huebut Rao Mankur* v. *Govind Rao Mankur.* 1st Sept. 1823. 2 Borr. 75.—Barnard.

52. Semble, A boy cannot be adopted, although his natural father should have consented to the adoption, if the latter should not have lived to make the gift of his son.[3] *Gourbullub* v. *Jugernotpersaud Mitter.* 4th Term 1823. Macn. Cons. H. L. 217.

53. Where the gift and acceptance of a second son preceded the death of an elder son of the giver in adoption, it was held that the full completion of the adoption of the second son was legal. *Mt. Dullabh De* v. *Manu Bibi.* 27th July 1830. 5 S. D. A. Rep. 50.—Ross & Turnbull.

54. Where a Brahman has a daughter and daughter-in-law living, it was held that he cannot adopt the son of a daughter pre-deceased[4]; nor can such person, so illegally adopted, adopt his wife's sister's child, and make him heir to the grandfather's property, which would pass to the daughter-in-law on the Brahman's death, and subsequently to the daughter, the daughter-in-law not being allowed to alienate the property during the daughter's life. *Baee Gunga* v. *Baee Sheoshunkur.* 8th May 1832. Sel. Rep. 73.—Ironside, Barnard, Baillie, & Henderson.

55. Semble, A man, having no son of his own, can adopt his wife's sister's son. *Ib.*

56. There is no instance in the Hindú law of the adoption of a daughter to inherit.[5] *Doe dem. Hencower Bye and others* v. *Hanscower Bye and another.* 9th Feb. 1818. East's Notes, Case 75.

57. It was held, however, that the adoption of the daughter of a brother, with the condition that her eldest son shall be the *putrica-putra* (son of a daughter) of the adopter, is legal; and this notwithstanding that the affiliation of a daughter by a childless man, in default of male issue, is declared to be inadmissible by Macnaghten on the authority of Jímúta Váhana[6]: but it is essential to the validity of the adoption that it should take place previous to her marriage. *Nowab Rai* v. *Bugawuttee Koowur and others.* 6th Jan. 1835. 6 S.D.A. Rep. 5.—Stockwell.

58. An adoption by a Brahman of his sister's son was held to be valid. *Ramchunder Chatterjea* v. *Sumboochunder Chatterjea.* Aug. 1810. Macn. Cons. H. L. 167.

59. A Hindú (a Brahman) cannot adopt his sister's son, as it imports incest.[7] *Doe dem. Kora Shunko Takoor* v. *Bebee Munnee.* 24th Nov. 1815. East's Notes, Case 20.

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[1] Datt. Mim. s. ii. 29. 73. Datt. Chan. s. i. 20. 27. Suth. Synop. 214. Mit. c. i. s. xi. 36. There seems, however, good reason to doubt the correctness of this decision, the more especially with reference to a *Kritrima* adoption. See 1 Macn. Princ. of H. L. 68. 75. Datt. Chan. s. i. 28. It is to be observed that the point decided came only before a single Judge. It seems clear that a brother's son should be preferred. Menu, B. ix. v. 182. Mit. c. i. s. xi. 13. 1 Str. H. L. 84. 2 Do. 103. Macn. Cons. H. L. 155.

[2] May. c. iv. s. v. 17, 18, 19.

[3] It did not appear in this case whether or not the mother of the boy survived her husband; and we do not know, therefore, that the consent of a father thus given, might not have been sufficient authority for the widow to act upon after his death.—Macn.

[4] May. c. iv. s. v. 9.

[5] 2 Str. H. L. 217.

[6] 1 Macn. Princ. of H. L. 102. And see, as to *appointed* daughters, 3 Coleb. Dig. 167, *et seq.* 183. 189. 292. 493. Mit. c. i. s. xi. 7. 8. Daya Bh. c. x. 3.

[7] Datt. Mim. s. ii. 91—93. Datt. Chan. s. i. 17. 2 Str. H. L. 100 Macn. Cons. H. L. 149. 166. But a Súdra may adopt the son of a sister, or even a daughter's son.—Do. 119. 125. 150.

60. Among Brahmans, a widow cannot adopt her uncle's son, as she could not be his mother, on the ground of incest. *Dagumbaree Dabee* v. *Taramony Dabee.* 1818. Macn. Cons. II. L. 170.

61. By the law and usage of Mithila, the adoption of a sister's son, even by persons of high Cast, according to the *Kritrima* form of adoption, is valid.[1] *Chowdree Purmessur Dutt Jha* v. *Hunooman Dutt Ray and others.* 18th Dec. 1837. 6 S. D. A. Rep. 192.—Rattray & F. C. Smith.

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3. *Who may give in Adoption.*

62. If the father of a boy to be given in adoption be dead, the consent of the elder son, as representing the father, is sufficient[2]: the mother not attending, her consent will be presumed. *Veerapermall Pillay* v. *Narrain Pillay.* 5th Aug. 1801. 1 Str. 91.

63. If both parents be dead, it appears that the child may be given by the elder brother only.[3] *Ib.*

64. Although a widow may not have obtained the consent of her husband during his life to give their child in adoption, it is nevertheless competent to her, having obtained the consent of father, brothers, &c., to give her younger son in adoption. *Arnachellum Pillay* v. *Iyasamy Pillay.* Case 5 of 1817. 1 Mad. Dec. 154. —Scott, Greenway, & Ogilvie.

65. In the case of an adoption made by a widow without having obtained the consent of her husband, or in which the adopted son shall not have been delivered over to her by either of his parents, but only by his brother, the Court will not hold the adoption valid.[4] *Mt. Tara Munee Dibia* v. *Dev Narayun Rai and Bishen Persaud.* 10th July 1824. 3 S. D. A. Rep. 387.—Shakespear.

66. A Hindú widow is incompetent to give her only son in adoption as a *Dwyámushyáyana* without authority previously given by her deceased husband.[5] *Debee Dial and another* v. *Hur Hor Singh.* 29th Dec. 1828. 4 S. D. A. Rep. 320.—Leycester.

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4. *The Form to be observed in Adoption.*

(a) Generally.

67. The sacrifice of fire, important as it may be deemed in a spiritual point of view, is so with regard to the Brahman only.[6] *Case of Rajah Nobkissen.* Cited in 1 Str. H. L. 96. (Sup. C. Cal.)

68. The operative part of the ceremony of adoption seems to be the *giving* and *receiving.*[7] Nothing beyond being so essential to the act, as, being mistaken, or omitted, can have the effect of invalidating the adoption.[8] *Veerapermall Pillay* v. *Narrain Pillay.* 5th Aug. 1801. 1 Str. 91.

69. The only indispensable parties to adoption appear to be the parents on either side, or the survivor, or their representatives, a fit and proper boy, and perhaps a priest. The rest

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[1] The Dattaka Mimánsá must be considered to refer only to a *Dattaka* adoption, and not to the *Kritrima* form. The same point as in the above case was ruled by a decree of the Sudder Court of Allahabad, dated the 16th July 1833, in a case, *Mt. Bala* v. *Mt. Botolee and another*, in which the parties were Mithila Brahmans. It is presumable, from a part of the decree, (which generally upheld the validity of a *Kritrima* adoption of a sister's son,) that the parties were governed by the Mithila law; but this is not clear.

[2] Steele, 54. 55, note.

[3] The powers of the elder son, stated in this case, are denied *in toto* by Sir F. Macnaghten.—Cons. II. L. 207—228. There certainly appears to be no difference in effect between the powers requisite in those who *give* and those who *receive* in adoption. —See the authorities quoted in note 1. p. 12. *supra.*

[4] 3 Coleb. Dig. 262, note.

[5] Datt. Mim. s. i. 15. 3 Coleb. Dig. 242. 257.

[6] Nor would the inadvertent omission of the sacrifice to fire invalidate the adoption. —3 Coleb. Dig. 244. 2 Str. H. L. 131.

[7] Menu, B. ix. v. 168. 1 Str. H. L. 95. 2 Do. 87.

[8] 1 Str. H. L. 95. Suth. Synop. 218. and 226, note xiii. 3 Coleb. Dig. 244.

are visitors, and standers-by, or assistants, who eventually become witnesses of what passes; but they are not necessary to the validity of the act.[1] *Ib.*

70. Want of permission of the ruling authorities is not sufficient to invalidate an adoption once made with sufficient ceremonies.[2] *Bhasker Buchajee* v. *Naroo Ragonath.* 1826. Sel. Rep. 24.—Sutherland, Anderson, & Kentish.

71. Nor will the fact of the adoption having taken place at other than the place of residence of the parties be sufficient to set aside such adoption. *Ib.*

72. By the law of adoption, neither the assent of the wife of the adopter, nor the invitation and convention of near kinsmen, nor representation to the Rájah, are indispensable to the validity of the adoption. But the affiliation, as established by the sacrifice, is absolutely essential. *Alank Manjari* v. *Fakir Chand Sarkar.* 11th Sept. 1834. 5 S. D. A. Rep. 356.—Robertson.

73. Dictum of Strange R.—Adoption resulting from purchase *(krita)* is obsolete, and no longer competent, unless on the ground of local usage and custom.[3] *Goovoorummal and another* v. *Mooneesamy.* 1st Term 1812. 1 Str. 72.

74. Where a husband and wife have agreed in writing to adopt a child, such agreement is valid and binding in law, whether the name of the child and its parents be mentioned therein, in order to identify it; or whether, to know whose child is referred to, the names of the mother, and the tribe from which he is descended, be only named. *Ranee Sevagamy Nachiar* v. *Streemathoo Heraniah Gurbah.*[4] Case 18 of 1814. 1 Mad. Dec. 101.—Scott, Greenway, & Stratton.

75. It was held not to be necessary to ascertain whether an act of adoption, and gift or bequest, to the adopted son were defective or not, where the adoption, and gift or bequest, had been sanctioned and confirmed by the established government of the country at the time they took place. *Sree Brijbhookunjee Muharaj* v. *Sree Gokoolootsaojee Muharaj.* 5th Nov. 1817. 1 Borr. 181.—Sir E. Nepean, Nightingall, & Bell.

76. Semble, The adoption of a nephew is valid even without a burnt sacrifice, and is completed by word of mouth alone. *Huebut Rao Mankur* v. *Govind Rao Bulwunt Rao Manhur.* 1st Session 1823. 2 Borr. 75.—Barnard.

77. Even if subsequent to gift and adoption, and before the sacrifice for male issue, the ceremony of tonsure had been performed in the family of a natural father, it was held to have no vitiating effect on the adoption; tonsure being an indifferent act by a stranger, possessing no effect whatever.[5] *Mt. Dullabh De* v. *Manu*

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[1] 3 Coleb. Dig. 244. 247. 1 Str. H. L 95. 2 Str. H. L. 88. Datt. Chan. s. ii. 6. Suth Synop. 218.

[2] Suth. Synop. 218. 1 Str. H. L. 95. 2 Do. 88.; but see Steele, 184. and App. A. 30.

[3] This point gave rise to much discussion at the time (see 1 Str. H. L. 102. and 2 Do. 132 *et seq.*); and although it may be generally asserted that there are only three species of adoption allowable in the present age, viz. *Dattaka, Dwyámushyáyana,* and *Kritrima* (Datt. Mim. s. 1. 64. Datt. Chand. s. i. 9. Suth. Synop. 211.), yet the rule should be qualified, by admitting an exception in favour of any particular usage which may have prevailed from time immemorial —1 Macn. Princ. H. L. 101. 1 Str H. L. 102. 3 Coleb. Dig. 276, note. *Quære,* Whether even the *Dwyámushyáyana* form is recognised in the present age so as to entitle the son so adopted to inheritance, except by custom.—2 Str. H. L. 82. 118. 179.

[4] See *supra* p. 13, note 1.

[5] In the Dattaka Mimánsá it is declared that the son adopted cannot become a *Dattaka* in the ordinary form after tonsure has been performed in the family of the natural father, but that he must be considered the son of two fathers. According to the Dattaka Chandriká, adoption is lawful even after tonsure. The difference of opinion arises from a difference of grammatical construction.—1 Macn. Princ. H. L. 72. Jagganátha affirms that affiliation depends on the ceremony of tonsure.—3 Coleb. Dig.

Bibi. 27th July 1830. 5 S. D.A. Rep. 50.—Ross & Turnbull.

78. Although a written acknowledgment of adoption, the invitation of the neighbouring *Zamíndárs*, and notice to the ruling power, are not absolutely necessary to render an adoption valid; yet where the situation in life of the parties renders such forms usual, the omission of them affords presumptive evidence against the fact of the adoption. *Sutroogun Sutputty* v. *Sabitra Dye*. 7th April 1834. 2 P. C. Cases, Case 4.

79. *Per* Ryan, C. J.—The ceremony of tonsure having been performed in the house of the natural father is no bar to adoption; for after performance, a sacrifice to fire, even amongst the three first classes, may be resorted to, and this will undo its effects. With Súdras there is no ceremony but marriage.[1] *Sreemutty Joymony Dossee* v. *Sreemutty Sibosoondry Dossee*. 28th March 1837. 1 Fulton, 75.

80. Though, when a person is once adopted according to the Védas, the adoption cannot be set aside; yet where a man had adopted his daughter's son[2], and could not produce any writing or deed of adoption, the adoption was held to be invalid, as it was not proved that the ceremonies prescribed by the Shastra had been adhered to. *Baee Gunga* v. *Baee Sheoshunkur*. 8th May 1832. Sel. Rep. 73.—Ironside, Barnard, Baillie, & Henderson.

81. *A* claimed from *B* the half share of a *Kulharní watan* as the adopted son of the widow of the nephew of the original holder, who died without issue, and produced a document in proof of his adoption: the witnesses to prove the document, in separate depositions, stated the adoption to be incomplete, in consequence of the interference of the *Kulharní*, who declared the consent of the *Sirkar* to be necessary to the validity of the act; and the Court considering that *A*'s adoption had not been satisfactorily established by the document recorded alone, his claim was dismissed.[3] *Nursoo Keishu* v. *Ragvendapa Champgoomkur*. 1837. Sel. Rep. 200.—Giberne, Pyne, & Greenhill.

(*b*) *Kritrima*.

82. Where a *Zamíndár* of Tirhoot adopted one of his kindred by a verbal declaration in the presence of witnesses, but without any religious rite or ceremony, and the person so adopted was acknowledged, after the *Zamíndár's* death, as his heir at the obsequies, it was held that this adoption was good[4], and that the son adopted (*Kurta Putra*) takes the whole inheritance exclusively, including *all* the property, real and personal, hereditary and acquired.[5] *Kullean Sing* v. *Kirpa Sing and another*. 23d April 1795. 1 S. D. A. Rep. 9.—Sir J. Shore & Council.

83. In the form of adoption called *Kritrima* (a form peculiar to the province of Mithila) the express con-

148. 249.; and see Macn. Cons. H. L. 141. Sir F. Macnaghten seems to think that, by the law of Bengal, the ceremony of tonsure having been performed is an insurmountable bar to a subsequent adoption.—Macn Cons. H. L. 146. 192, *et seq*. 205; but see the next case, and *infra* p 22, note 9.

1 Str. H L. 91

2 A daughter's son is sometimes adopted with the consent of kin.—Steele, 184.

3 This was merely a question of evidence.

4 The authorities for the *Kritrima* form of adoption are, Viváda Chintámani: "If a person, being childless, say to the son of another, 'Be you my son,' and he answer, 'I have become your son,' he is a *Kritrima putra*." Vivada Chandra: "If a person say to another of his own tribe, 'Be you my son,' and the other agree thereto, and answer, 'I have become your son,' he is a *Kritrima* son." Baudhayana: "He whom a man adopts, the boy being equal in class and consenting to the adoption, is a son made."—2 Str. H. L. 155. Suth. Synop. 226, note xvi.

Macn. Cons. H. L. 126. 128. This was an adoption of a *Kritrima* son (Vulg. *Kurta putr*), a form of adoption in use throughout Mithila. There is no doubt that this adopted son is heir, as declared by the answers of the Pandits to the Sudder Court, to all the property, real or personal, hereditary or acquired, of his adoptive father.—Coleb.

sent of the person nominated for the adoption must be obtained during the lifetime of the adoptive father[1]; the offer to adopt, as being the act of one of the parties only, and as being merely a proposal to enter into a contract, was held to be insufficient to give validity to the transaction.[2] *Mt. Sutputtee* v. *Indranund Jha.* 2d April 1816. 2 S. D. A. Rep. 173. —Harington.

84. The only necessary condition to render valid an adoption in the *Kritrima* form is that of equality of Cast.[3] *Chowdree Purmessur Dutt Jha* v. *Hunooman Dutt Ray and others.* 18th Dec. 1837. 6 S. D. A. Rep. 192.—Rattray & F. C. Smith.

85. The agreement of both parties is essential to the validity of an adoption, according to the *Kritrima* form.[4] *Durgopal Singh and another* v. *Roopun Singh and others.* 3d Sept. 1839. 6 S. D. A. Rep. 271.—Braddon & Lee Warner.

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5. *Time of Adoption.*

86. The sooner adoption takes place by a widow after the death of her husband the better.[5] *Veerapermall Pillay* v. *Narrain Pillay and others.* 5th Aug. 1801. 1 Str. 91.

87. An adoption is good though the adopted should have passed his fifth year at the time, and have undergone the ceremony of purification by tonsure, provided he be a *Sagotra*[6], or descended in a direct male line from a common male ancestor, or *that he be the son of a near relation on the paternal side of the adopter.*[7] *Case of the Rajah of Tanjore.* Cited in 1 Str. 133. *Veerapermall Pillay* v. *Narrain Pillay.* 5th Aug. 1801. 1 Str. 91.

88. If tonsure have not been performed, an adoption will be legal, however much the age of the adopted may exceed five years.[8] *Ib.*

89. Semble, That the limitation of age becomes material if the adopted son be taken from a line of strangers. *Ib.*

90. Where the daughter of a person deceased claimed to recover his estate from a son adopted by his widow at the age of eight years, on the ground that the adoption of a boy when above the age of five was not legal; it was held, that as the boy adopted had not been previously initiated in the family of his natural father, the adoption was legal, and judgment was accordingly given against the claim.[9]

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[1] 1 Macn. Princ. H. L. 76.

[2] It did not appear that in this case there had been any written contract of adoption between the parties. Had a plea of this nature been established, it would doubtless have given validity to the transaction, provided the offer of adoption had been accepted during the lifetime of the person nominating, the performance of the ceremony of bathing, &c. being considered of minor importance.—Macn.

[3] 1 Macn. Princ. H. L. 75. 3 Coleb. Dig. 277.

[4] 3 Coleb. Dig. 277. Suth. Synop. 215. and 224, note viii. 2 Str. H. L. 203. Mit. c. i. s. xi. 17. n.

[5] Macn. Cons. H. L. 145. 157.

[6] 3 Coleb. Dig. 264. Mit. c. i. s. xi. 13. Steele, 50. 1 Str. H. L. 88. 90. 2 Do. 109.

[7] But see Macn. Cons. H. L. 195.

[8] The restriction as to purification and age respects only the three superior Casts: it is not binding upon Súdras. And, with respect to the superior Casts, the criterion is not the precise age of the adopted, but whether he have undergone, in his natural family, the ceremonies of inauguration, of which the principal is tonsure.

[9] In this case a very important question of Hindú law was finally determined. It had been previously agitated in other cases before the Supreme Government, formerly exercising a judicial authority in regard to the succession to *Zamindáris*, and had been then determined on similar principles. But the question was now, for the first time, decided in the Sudder Dewanny Adawlut. A passage cited as an authority of law by the Hindú writers whose works are current in Bengal, expresses, that after the fifth year a child should not be adopted by any of the forms of adoption, but that a person desirous of making an adoption should take a child of an age not exceeding five years. On this passage a question arose whether the limitation of age was to be understood as positive and constituting an indispensable requisite to the validity of the adoption, or whether it admitted of any latitude of con-

Kerutnaraen v. *Mt. Bhobinesree.* 6th Sept. 1806. 1 S. D. A. Rep. 161. —H. Colebrooke & Fombelle.

91. The rules fixing the age at which a child may be adopted are not the same in every Cast. A child may be adopted from the twelfth day after its birth to the day of the *Upanayana*, or tying on the thread worn across the body: the age for performing the *Upanayana* is, for Brahmans eight years, for Kshatriyas eleven, for Vaisyas twelve[1]: Súdras may be adopted till the sixteenth year.[2] *Rance Sevagamy Nachiar* v. *Streemathoo Heraniah Gurbah.*[3] Case 18 of 1814. 1 Mad. Dec. 101.—Scott, Greenway, & Stratton.

92. Amongst Brahmans and Kshatriyas the age of five years does not limit the period of eligibility for adoption, if the adopted son be uninvested with the characteristic cord. *Mt. Dullabh De* v. *Manu Bibi.* 27th July 1830. 5 S. D. A. Rep. 50.—Ross & Turnbull.

93. According to the Jain Shastra, the age qualifying for adoption extends to the thirty-second year. *Maharaja Govindnath Ray* v. *Gulal Chand and others.* 23d March 1833. 5 S. D. A. Rep. 276. — H. Shakespear & Walpole.

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6. *Effects of Adoption.*

94. An adopted son was considered in the nature of a purchaser for a valuable consideration, as he thereby lost his inheritance in his own natural family.[4] *Gopeymohun Deb* v. *Rajah Nobhissen. Circa* 1800. Cited in East's Notes, Case 75. Macn. Cons. H. L. 230.

95. By the act of adoption the adopted son ceases to be the son of his natural parents, and becomes the same as a natural born son of his adoptive father, to all purposes.[5] *Gopeymohun Thakoor* v. *Sebun Cower and others.* 11th Feb. 1817. East's Notes, Case 64.

96. But a *Kritrima* son does not lose his connection with his natural family, and takes the inheritance both in it and the family of his adoptive father.[6] *Mt. Deepoo* v. *Gowreeshunkur.* 23d Feb. 1824. 3 S. D. A. Rep. 307.—Harington & Ahmuty.

97. A person being adopted by the wife of a Hindú does not, according to the law as current in Mithila, thereby become the adopted son of such Hindú, her husband, and *vice versâ.*[7] *Sreenarain Rai and another* v. *Bhya Jha.* 27th July 1812. 2

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struction. In other provinces, and even in Bengal, if the adoption be of a near relation on the paternal side, no difficulty would occur, as the adoption of a brother's son or other nearest male relation of the husband would be unquestionably valid at an age much exceeding that specified. But in Bengal, where the adoption of strangers to the family is practised, the settled doctrine is, that the boy's age must be such, that his initiation, the principal ceremony of which is tonsure, may be yet performed in the adopter's name and family. Admitting, then, the authenticity of the passage and its interpretation (both of which are, however, contested), the best authorities in Bengal acknowledge the restriction as thus explained, and not as confined to the particular age of five years. Accordingly, in the case under consideration, the boy not having been previously initiated in his natural father's family, was held by the Court to have been legally adopted.—Coleb. And see Macn. Cons. H. L. 141 146. 192, *et seq.*

The limitation of the age to five years appears to be founded on a doubtful passage of the Káliká Puráná —3 Coleb. Dig. 149. The Dattaka Chandriká does not mention it. the Dattaka Mimánsá does.—Suth. Synop. 216, 225, note xi. Dat. Chan. s. ii. 20—33. Datt. Mim. s. iv. 22—54.

[1] 1 Macn. Princ. H. L. 73. Datt. Chan. s. ii. 30. and note. Macn. Cons H. L. 140.

[2] Súdras may be adopted up to the time of their contracting marriage, according to the Datt. Chan. s. ii. 29—32. 3 Coleb. Dig. 94 1 Str. H. L. 35. 91. As to the limit of age by the custom of sundry Casts of Poonah, see Steele, App A. 28.

[3] See *supra*, p. 13, note 1

[4] 2 Macn. Princ H. L. 183. Macn. Cons. H. L. 220. Mit. c. i s. xi. 32.

[5] Menu, B ix. v. 142. 3 Coleb. Dig. 270. Steele, 53. Macn Cons. H. L. 128. 152. 229.

[6] 1 Macn Princ. H. L 76. 3 Coleb. Dig. 276, note. Do 282. Suth. Synop. 219. 226, note xv. 227, note xviii. xix 2 Str. H. L. 204.

[7] 1 Macn. Princ. H. L 76.

S. D. A. Rep. 23.—Harington & Stuart.

98. Nor according to the law and usage of Mithila, even though the adoption should have been permitted by the husband. *Ib.*

99. A boy adopted by a widow, with the permission of her late husband, has all the rights of a posthumous son; so that a sale made by her, to his prejudice, of her late husband's property, even before the adoption, will not be valid unless made under circumstances of inevitable necessity. *Ranee Kishenmunee* v. *Rajah Oodwunt Singh and another.* 24th June 1823. 3 S. D. A. Rep. 228.—Leycester & Dorin.

100. Where a Hindú died in gaol, where he had been confined in execution of a decree for debt, it was held that his son, adopted by another person, was not liable for his debts, as an adopted son is not liable for any debts left by his own father.[1] *Pranvullubh Gokul* v. *Deokristn Tooljaram.* 24th June 1824. Sel. Rep. 4.—Romer, Sutherland, & Ironside.

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7. *Adoption cannot be set aside.*

101. A Hindú having adopted a son, cannot disinherit such son by will.[2] *Gopeymohun Deb* v. *Rajah Rayhissen.* *Circa* 1800. Cited in East's Notes, Case 75.

102. An adopting father cannot disinherit a son properly adopted agreeably to the laws of the Dharma Shastra, even for bad behaviour, neither can he adopt another son. But should a man take another for the purpose of adopting him, and change his mind before full performance of the ceremony for adoption, as laid down in the Shastra, he is at liberty to put aside the first person, and to adopt any other whom he may choose.[3] *Daee* v. *Motee Nuthoo.* 6th Oct. 1813. 1 Borr. 75.—Sir E. Nepean, Brown, & Elphinston.

103. Adoption performed according to the ceremonies of the Védas and Shastra cannot be set aside[4] from any want of formality, or other cause, should the person opposing it be ever so near a kin to the adopter. *Sree Brijbhookunjee Muharaj* v. *Sree Gokooloot saojee Muharaj.* 5th Nov. 1817. 1 Borr. 181.—Sir E. Nepean, Nightingall, & Bell.

104. The adoption of an only son once made cannot be set aside. Both the giver and receiver in adoption thereby commit sin. *Arnachellum Pillay* v. *Iyasamy Pillay.* Case 5 of 1817. 1 Mad. Dec. 154.—Scott, Greenway, & Ogilvie.

105. Semble, An only son once adopted, the adoption cannot be invalidated. *Nundram and others* v. *Kashee Pande and others.* 30th June 1825. 4 S. D. A. Rep. 70.—Harington & Martin.

106. The same point was also decided in *Sreemutty Joymony Dossee* v. *Sreemutty Sibosoondry Dossee.* 28th March 1837. 1 Fulton, 75.

107. Where an adoption is made contrary to the provisions of the Hindú law, the sin lies with the person giving, and not with the party receiving, and it cannot be set aside; as an adoption having once been effected according to the forms of the Véda cannot on any pretence be annulled. *Huebut Rao Manhur* v. *Govind Rao Bulwunt.* 1st Sess. 1823. 2 Borr. 76.—Barnard.

108. As a lawfully-begotten son may renounce his share in the estate of his father, even so an adopted son is at liberty to resign his right to the property of his adoptive father, although he cannot free himself from the adoption.[5] And should he so refuse to take the property, and if the

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[1] Steele, 53. 1 Str. H. L. 101. 2 Do. 124. 125. 1 Coleb Dig. 266, note.

[2] Macn. Cons. H. L 228.

[3] 1 Str. H. L 95. 2 Do. 113. 115. 135.

[4] Steele, 186. 2 Str. H. L. 126. And this because he cannot claim the estate of his natural father.—Menu, B. ix. v. 142. Mit. c. i. s. xi. 32.

[5] Mit. c. i. s ii. 11.

property to which he succeeds be a share of a divided heritage, the adopter's widow will succeed to it. *Ruvee Bhudr Sheo Bhudr* v. *Roopshunker Shunkerjee.* 13th May 1824. 2 Borr. 656.—Romer, Sutherland, & Ironside.

109. A Hindú having adopted a son, and from feelings of anger against him made a will in favour of him and his brothers; it was held that such will did not affect the adoption, and that he was not, by reason of the existence of the will, liable for his own father's debts. *Pranvullubh Gokul* v. *Deokristn Tooljaram.* 24th June 1824. Sel. Rep. 4.—Romer, Sutherland, & Ironside.

110. Where a widow received instructions from her husband to adopt a son, and in accordance with them applied to her brother-in-law and his relations for a son, and they refused to give her one; it was held, that neither length of time after the decease of her husband, nor the adoption having taken place at other than the place of residence of the parties, nor want of permission of the ruling authorities, are sufficient grounds for setting aside an adoption once made with sufficient ceremonies[1]; and that a son so adopted becomes heir to the whole of his adoptive father's property.[2] *Bhasker Buchajee* v. *Narroo Ragoonath.* 1826. Sel. Rep. 24. —Sutherland, Anderson, & Kentish.

8. *Conditional Adoption.*

111. Semble, A Hindú may authorise his wife to adopt a son conditionally, *i.e.* in the event of the death of a son whom he leaves surviving him; but if his own son should live, he cannot empower the widow to adopt, in case of a disagreement between her and the son. *Mt. Solukhna* v. *Ramdolal Pande and others.* 27th May 1811. 1 S. D. A. Rep. 324.—Harington.

112. If a son, legally adopted, shall, being of age, execute an agreement, acknowledging the validity of his right to depend upon his performance of certain conditions, his infraction of those conditions will be held to nullify his right. *Mt. Tara Munee Dibia* v. *Dev Narayun Rai and another.* 10th July 1824. 3 S. D. A. Rep. 387.—Shakespear.

II. By Muhammadans.

113. Adoption under the Muhammadan law confers no right of succession to property. *Husan Ruza Khan* v. *Mohammud Muhdee Khan.* Case 12 of 1817. 1 Mad. Dec. 167. —Scott, Greenway, & Ogilvie.

III. By Sikhs.

114. Semble, That among the Sikhs, ceremonies, though usual, are not indispensable to make an adoption good. *Doe dem. Kissenchunder Shaw* v. *Baidam Beebee.* January 1815. East's Notes, Case 14.

IV. By Pársís.

115. Semble, Among the Pársís a wife's consent is not necessary to render an adoption legal, though, if obtained, it would be better. *Nawee Buhoo* v. *Peshtunjee Loola Bhaee.* 15th Dec. 1802. 1 Borr. 1.—Duncan, Cherry, & Lechmere.

116. Semble, Among the Pársís, seating the person to be adopted in the lap of the adopter is not necessary to complete the adoption, which is equally legal if the parties call each

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[1] Datt. Chan. s. ii. 6. Suth. Synop. 218. 1 Str. H. L. 95. 2 Do. 88. But see Steele, 184, and App. A. 30.

[2] This decree, which was on a motion for revision of a decree of the Sudder Adawlut, reversed the decision of the Collector of Poonah, who considered the adoption irregular, as having been effected without the consent of the relations; and also of the Sudder Adawlut affirming the Collector's decree, for the reason that such adoptions were manifest abuses of the institution, and that they should not be encouraged when the effect was, as in the present case, to give the property of an undivided family to a stranger.

other by the names of father and son. *Ib.*

117. Semble, If a Pársí adopt a son, and afterwards adopt another, the performance of the *Wootumna* by the first will make him heir *de jure*. *Ib.*

118. It was decided by an award of the *Dastúr*, that among the Pársís, where a man has no male issue, a son must be adopted, either by himself during his life, or for him by his relations after his decease.[1] *Furidoonjee Shapoorjee* v. *Jumshedjee Nowshirwanjee*. 25th May 1809. 1 Borr. 23.—Duncan, Lechmere, & Richards.

ADULTERY.—See Husband and Wife, 97; Criminal Law, 56 *et seq.*

ADVERSE POSSESSION.

1. A *Zamíndár* having discharged certain persons, his *Díwáns* and *Tahsíldárs*, for alleged misconduct, and ejected them from a house and other premises claimed and occupied by them for above twenty years, and to which he could not himself shew any title, except as being within his *Zamíndári*; and having caused the discharged officers to be placed under personal restraint, and seized all their property situate within his *Zamíndári*; was decreed on appeal, by the Sudder Dewanny Adawlut of Madras, which decree was affirmed by the Judicial Committee of the Privy Council, to restore possession of the premises, and to pay compensation in damages, with costs, for the wrong and injuries inflicted. *Rajah Pedda Vencatapa Naidoo* v. *Arooyala Roodrapa Naidoo and another*. 2d July 1841. 2 Moore, Ind. App. 504.

[1] This award was held good by all the Courts, merely *as an award*, under Sec 20 of Reg VII of 1800, and the point here noticed was not discussed

ADVOCATE GENERAL.

1. Where an information had been filed by the Advocate General of the Honourable Company on behalf of the King, according to the Statute 53d Geo. III. c. 55. s. 3., and the Advocate General had returned to England for the benefit of his health, and had been succeeded by another, appointed Advocate General *pro tempore*; it was held, that the title of the original bill was not to be changed, for the fact still remained, that the original information to the Court had been given by the retired Advocate General on behalf of the King, under the Statute aforesaid; and that the proceedings on an information could only abate by the death or determination of interest of the defendant.[2] *Edward Strettell, Esq., Advocate General, at the relation &c.* v. *Palmer and another*. 4th Term, 1816. East's Notes, Case 62.

2. In a bill to carry the trusts of a will into execution, amongst which was one for charitable purposes specified, the Advocate General is not a necessary party, as the Attorney General would not be so in England. *Quære*, Whether the Advocate General of the Supreme Court represents the Attorney General in England. *Pogose* v. *Pogose*. 25th Nov. 1835. Mor. 282.

3. Dictum of Grant, J.—The Advocate General does not represent the Crown, *ex officio*, in the same way as the Attorney General in England. *The Martin Case*. 10th May 1836. 1 Fulton, 257.

AFFIDAVIT.

I. Generally, 1.

II. Costs of Affidavit. — See Costs, 7.

[2] *Quære*, If there be any case, except that of a new bill, where it is necessary to name the individual Advocate General; but if there be such, it should seem sufficient merely to name *A B*, who is now the Advocate General of the Company, &c., in the place of *C D*.—Note by Sir Edward H East

I. GENERALLY.

1. An affidavit by an assignee of a bond to hold to bail will be considered good, although it be not positive as to the existence of the debt. *Ramoorboy*, v. *Coonjara Soobaroy*. 12th Feb. 1807. 1 Str. 227.

2. An affidavit in support of a bill for an injunction against an action at law will not be construed like an affidavit to hold to bail. *Abbot and another* v. *Davidson*. 6th Nov. 1809. 2 Str. 57.

3. If an affidavit in support of an application for a *habeas corpus* be unnecessarily and improperly insulting to the person to whom the writ was to be addressed, it will be refused by the Judge to be sworn. *The King* v. *Monisse and others*. 4th June 1810. 2 Str. 122.

4. An affidavit to obtain a commission to examine witnesses must state the points to which it is required to examine the witnesses. *Ramrutton Mullick* v. *Barretto*. Cl. R. 1829. 285. *Laprimaudaye* v. *Prawnkissen Biswas*. 12th July 1824. Cl. R. 1829. 286.

5. But these cases were afterwards overruled. The Court having desired the Registrar to ascertain the practice of the Court, he stated that he had found three cases in which the affidavits set forth the points, and two in which they did not. The former practice being contrary to the practice in England, the Court decided that the affidavit need not set forth the points to which the witnesses were to be examined. *Cossum Bin Osman* v. *Abdool Rosack Dagomaun*. 25th June 1832. Cl. R. 1834. 38.

6. An affidavit may be interpreted by a Commissioner, who annexes an affidavit sworn before another Commissioner, swearing that he had interpreted it truly, although the commission did not authorise him to do so. *The King* v. *Wright and others*. 19th June 1827. Cl. R. 1829. 337.

7. But other affidavits interpreted by *A*, who likewise made an affidavit that he had interpreted them correctly, were rejected. *Ib.*

8. An affidavit denying that the defendant is subject to the jurisdiction of the Supreme Court is a good affidavit of *merits*, in applying to set aside on terms an ex-parte judgment, or a judgment by default. *Morton* v. *Mehdy Ally Khan*. 4th Term, 1827. Cl. Ad. R. 1829. 44. Sm. R. 12.—(Ryan, J. *dubitante*).

9. An affidavit, to be used in a reference before the Master, need not be sworn before him, but may be sworn under a Commission, although the Master be willing to attend at the party's house and swear him. *Buddinauth Bysack* v. *Ramsunker Bysack*. 29th May 1829. Cl. Ad. R. 1829. 53.

10. An office copy of an affidavit sworn before the Master cannot be used as grounds for an application to the Court. *Anon.* 22d Nov. 1838. Barwell's Notes, 13.

11. The Court will not receive affidavits at the hearing of a cause to shew that there is a material error in a deposition taken down by the Examiner, where the alleged mistake is upon a point directly in issue in the cause. The Court thought that it might be otherwise where the alleged mistake was upon a collateral point only. *Rajah Gopeemohun Deb* v. *The East-India Company*. 5th Feb. 1839. Mor. 292.

12. Where an affidavit was put in as the sole ground for an injunction and a receiver, by the complainant herself, and it was not certified by the Commissioner that the affidavit was interpreted, or that the party was sworn; it was held, that the Court will presume the Commissioner to have acted rightly, there being sufficient ground for so doing. *Sree Mutty Moha Ranee Bussunt Comaree* v. *Bullubdub Coopooreah and another*. 20th June 1839. Barwell's Notes, 83.

13. The ninth Ecclesiastical Rule[1]

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[1] 2 Sm. and Ry. 177. par. 9.

only requires an affidavit in the first instance to be filed within eight days after the entry of the *caveat*, and does not prevent *further* affidavits, or affidavits in reply, from being filed afterwards on behalf of the *caveator*, so that they are filed before the argument.[1] *In the goods of Manuk.* 24th June 1839. Mor. 297.

14. Semble, When the action sounds in damages, it is more correct to draw the affidavit stating that the plaintiff is damnified, than that the defendant is indebted. *Macgregor* v. *Sheddings.* 8th Aug. 1843. 1 Fulton, 46.

AFFRAY.—See CRIMINAL LAW, 61 *et seq.*

AGENT AND PRINCIPAL.

I. IN THE SUPREME COURTS.
1. *Generally*, 1.
2. *Obligation of Principals to third persons*, 5.
3. *Right of Agent against Principal*, 7.
4. *Liability of Agent to Principal*, 8.

II. IN THE COURTS OF THE HONOURABLE COMPANY.
1. *Generally*, 10.
2. *Right of Agent against Principal*, 12.
3. *Liability of Agent to Principal*, 13.
4. *Rights of Principal against third persons*, 18.
5. *Obligation of Principals to third persons*, 19.
6. *Liability of Agent to third persons*, 23.
7. *Mortgage by Agent.* — *See* MORTGAGE, 62.

III. SIKH LAW, 26.

I. IN THE SUPREME COURTS.

1. *Generally.*

1. An agent on commission is answerable for interest on a liquidated balance. *Latchenny Umma* v. *Lewcock and others.* 10th Feb. 1800. 1 Str. 30.

2. And will forfeit his title to commission if guilty of malversation in the execution of his agency. *Ib.*

3. An agent making exorbitant advances for alleged professional services, will be considered as acting in an improvident manner, and such advances will be refused in account. *Ib.*

4. The plaintiffs wishing to dispose of a factory, directed, by advertisements, those desirous of becoming purchasers to apply to the defendants, as their agents, as to the terms, &c.; they, the plaintiffs, however, disposed of the property themselves. Held, that the agents had no right to charge commission on the purchase-money, nor were they justified in doing so by any local custom of merchants in Calcutta. *Morell* v. *Cocherell.* 21st Nov. 1835. 1 Fulton, 209.

2. *Obligation of Principals to third persons.*

5. Where a *Gumáshtah*, carrying on trade in Calcutta for his employers, who lived at Ghazeepore, had given a warrant of attorney in their names, but, as alleged, without their authority, the Court refused to set aside a judgment and execution entered thereupon against the principals, but left them to their legal remedy against their *Gumáshtah*, if he had exceeded his authority. *Bungseeder Shaw and another* v. *Tickman Buckett and another.* 3d July 1820. East's Notes, Case 121.

6. In an action against the East-India Company by the holder of a forged imitation of one of their promissory notes issued by the Governor-General in Council, at Calcutta, it was held, that the Company were not bound by the acknowledgment of it as genuine by a clerk in their Accountant General's office, who was authorised by the Accountant General to

[1] 2 Sm. and Ry. 178. par. 10.

compare all notes with the register, but not authorised to certify their genuineness, although it appeared that it was his practice to do so. *Bank of Bengal* v. *The East-India Company.* 8th Jan. 1834. 2 Knapp, 245.

3. *Right of Agent against Principal.*

7. Where a defendant had acted as *Mukhtár* for the complainant, and was discharged from such service, the complainant giving him a general release as to all matters in account between them, and afterwards filing a bill in equity against him for an account; it was held, that the complainant was barred from so doing by the release, under the circumstances, though it was charged in the defendant's answer, and disproved in evidence, upon interrogatories, that the complainant had been made acquainted with the actual state of the accounts, and that a balance had been found, as the defendant admitted, against him upon such account taken. *Kissoree Dossee* v. *Mullick.* Jan. 1815. East's Notes, Case 12.

4. *Liability of Agent to Principal.*

8. An agent or factor is answerable to his constituent if he sell property in his hands belonging to the latter contrary to his directions, though there may be a balance between them at the time in favour of the agent, the right of the agent, under such circumstances, consisting in his having a lien only, subject to his responsibility as to the disposal of it. *Abbott and another* v. *Davidson.* 6th Nov. 1809. 2 Str. 57.

9. And under such circumstances a debit in an account will not be allowed, subject to explanation. *Ib.*

II. In the Courts of the Honourable Company.

1. *Generally.*

10. Where *A* claimed from *B* lands bought at a public sale by the late husband of *B*, on the alleged ground that he bought them as agent on the part of *A*; this not being established, and it appearing, on presumptive proof, that the purchase made by the husband of *B* was for himself, judgment was passed dismissing the claim.[1] *Sumbhoonath* v. *Mt. Alukmunee.* 12th April 1808. 1 S. D. A. Rep. 231.—Harington & Fombelle.

11. Held, that the Courts could not award to special agents (*Mukhtárs*), appointed to conduct a cause in the principal Sudder Ameen's Court, any remuneration by the losing party for the performance of the duties of their office, under Reg. XII. of 1833.[2] *Krishto Mohun Ray, Applicant.* 15th Jan. 1840. 1 Sev. Sum. Cases, 69.—Reid.

2. *Right of Agent against Principal.*

12. In a suit for damages for the loss of manna, belonging to *A*, and deposited with *B*, a broker, which manna, as alleged by *A*, was illegally detained by *B*, and damaged through his neglect; it was held, that as the illegal detention and want of care were not proved, the suit should be dismissed; and the Court authorised *B* to apply for a public sale of the manna in his hands for payment of costs of suit adjudged against *A*, who had sued *in formâ pauperis.* *Meer Nizamoodeen* v. *Ramjeemul.* 5th April 1810. 1 S. D. A. Rep. 300.—Harington & Stuart.

3. *Liability of Agent to Principal.*

13. Where *A* claimed possession of

[1] It not being established in this case that the lands were purchased at the public sale for *A*, in the name of *B*, it did not become a question how far the provisions against purchases in fictitious or substituted names contained in Cl. 3. of Sec. 29. of Reg. VII. of 1799 were applicable.

[2] By an official Notification, dated the 8th June 1841, published at p. 456 of the Calcutta Gazette, the whole of the provisions of the above Regulation were extended to all the Courts in the Lower Provinces, except those of the Moonsiffs. But it has been rescinded by Act I. of 1846.

certain lands, as having been purchased by *B*, as her agent, with her money, and on her behalf, judgment was given in *A*'s favour on the production of *B*'s written acknowledgment of the fact. *Pudum Nath Rai* v. *Ranee Judesree.* 2d May 1806. 1 S. D. A. 132. — H. Colebrooke & Fombelle.

14. Where *A*, a trader, claimed from *B* and *C*, agents and brokers by profession, the price of goods sold by them on his account to a person who had proved insolvent, judgment was given for *A* against *B* and *C*, chiefly on presumptive proof, arising from the high rate of commission charged, that they had made themselves responsible for the recovery of the money when selling on credit. *Shakir Jan* v. *Ahmud Ollah.* 1st Aug. 1806. 1 S. D. A. Rep. 149. — H. Colebrooke & Fombelle.

15. *A* transmitted a bill on the Military Paymaster at Madras to *B*, desiring him to present the same, and to send him the amount in bank notes by post. A portion of the bank notes arrived safely, but others were lost. *B* proved, by the evidence of two witnesses, that he had inclosed the missing notes in a letter, and delivered the letter sealed to *C*, with directions to forward it by post. The Court held, that as *B* had acted in conformity with *A*'s instructions, he was not answerable for any subsequent accident or loss. *Vyapooree Moodelly* v. *Mooloovady Ramyengar.* Case 7 of 1812. 1 Mad. Dec. 55.—Scott & Greenway.

16. A ship broker, taking up freight (for the Goverment) from ship-owners, through the medium of another broker, was held liable for the payment of his agent's brokerage, according to the rate established by general usage. *Mihirranjee* v. *Wulubhdas Hureedas.* 23d May 1822. 2 Borr. 240.—Romer, Sutherland, & Ironside.

17. Where a broker was held liable for the value of goods consigned to him to sell, and unaccounted for to his principal, a decree was given against him by the Zillah Judge (Jones), with costs; it was held, on appeal, that as the goods were merely sent to the broker to sell, and some portion remained unsold on his hands; and that as the principal had never sent to demand the goods, the broker ought not to have been made liable for the costs; and the costs were decreed to be paid by the principal. *Nunna Meya* v. *Jummadass Heerachund.* 27th July 1823. Sel. Rep. 18. — Romer, Sutherland, & Ironside.

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4. *Rights of Principal against third persons.*

18. Where a *Muharrarí Potta* was obtained for certain lands from the agent of the *Jágírdárs*, without their authority or knowledge; it was held, that such *Potta* was illegal and invalid against their right and interest in the *Jágír;* and that the *Jágírdárs* were entitled to recover possession, with mesne profits since the date of the suit. *Mookummud Reazodeen* v. *Akbur Ali Khan.* 13th June 1808. 1 S. D. A. Rep. 238.—Harington & Fombelle.

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5. *Obligation of Principals to third persons.*

19. An engagement having been written without the knowledge and consent of a female on a signed blank, and entrusted by her to her agents for another purpose, was pronounced to be an invalid instrument.[1] *Wujih-On-Nisa Khanum* v. *Roshun-Ara Khanum.* 30th Oct. 1805. 1 S. D. A. Rep. 110.—H. Colebrooke & Harington.

20. A deposit of money delivered

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[1] The custom of entrusting agents with signed blanks being very prevalent, the decision in this case is important. It was adjudged, that the principal is not bound by an engagement which his agent has inserted in the blank without authority or against instructions.—Macn.

to the head *Gumáshtah* of a banking-house, who also had a distinct house in his own name, and that of his son, was declared not to be recoverable from the principals of the house to which the receiver was *Gumáshtah*, though the latter gave a receipt for the money as *Gumáshtah Mukhtár-kár*, it appearing from the evidence that the money had been received and used by the *Gumáshtah* on his own account, subject to an interest of half per-cent. per mensem, and there being no proof that the money was deposited on the credit of the bankers, to whom the receiver was agent.[1] *Juggut Ram* v. *Enayut Ullah.* 24th July 1807. 1 S. D. A. Rep. 204.—H. Colebrooke & Fombelle.

21. A *Tahsíldár* was held to be liable to refund *nazrs* illegally exacted by his officers, with his knowledge and connivance. And he was also subjected to a fine to Government of three times the amount so exacted.[2] *Baboo Deokinundun Sing* v. *Jobraj Rai.* 19th Feb. 1808. 1 S. D. A. Rep. 229.—Harington & Fombelle.

22. A party resident at Baroda indorsed two *khoondís*, or bills of exchange, in the name of a firm carrying on the business of banking at Surat, alleging himself to be the *Gumáshtah*, or agent of the firm, and afterwards, on the bills being dishonoured, absconded. Held, that in order to fix the firm at Surat with the amount of the bills, clear evidence ought to have been produced of the authority to act as *Gumáshtah*, and the Judicial Committee of the Privy Council, not being satisfied with the evidence admitted in the Courts below, reversed the decrees of both the Zillah and Sudder Courts, with costs. *Madho Row Chinto Punt Golay* v. *Bhookun-das Boolaki-das.* 8th Feb. 1837. 1 Moore, Ind. App. 351.

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6. *Liability of Agent to third persons.*

23. A claim of the appellant on the respondent for a sum of money as balance of an account was dismissed, the respondent appearing to have acted as *Gumáshtah* of a banker, and not being personally responsible. *Nowell* v. *Mootee Ram.* 15th July 1805. 1 S. D. A. 97. — H. Colebrooke & Harington.

24. A person having been imprisoned for debt, in execution of a decree of the Assistant Judge's Court, was released by a Judge's order, on security being tendered and accepted by the *Vakeel* of the plaintiff. The plaintiff sued the *Vakeel* and the deputy *Názir* for the amount of the debt, with costs; but it appearing that the *Vakeel* was acting under full powers from his principal, to do according to the best of his judgment; that the provision money for the prisoner had never been paid; and that the plaintiff having known that the prisoner was at large one month after his release, and not having taken further proceedings during seventeen months, had thus virtually acquiesced in the act of his *Vakeel*, the plaintiff (appellant) was nonsuited. The deputy *Názir* was held to be in nowise responsible, as the prisoner was released under the order of the Judge. *Malco Bhaee Kureem Bhaee* v. *Peshtunjee Kala Bhaee and another.* 5th Nov. 1816. 1 Borr. 177.—Sir E. Nepean, Nightingall, & Bell.

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[1] As this judgment was founded entirely on the evidence in the case, it can be no precedent against holding a banking-house responsible for money paid to its accredited agent in a transaction already shewn to have been with the house, and not with the agent individually, as in the present instance.—Macn.

[2] Proprietors and farmers of land are expressly declared by the Regulations (Cl. 7. of Sec. 15. of Reg. VII. of 1799, and a corresponding Clause in Sec. 14 of Reg. V. of 1800, as well as in Sec. 32. of Reg. XXVIII. of 1803) responsible for illegal exactions by their agents; and the same principle is obviously applicable to the agents of *Tahsíldárs*, especially when the exaction is made with the knowledge and connivance of the latter. In such cases the agent must be presumed to act for his principal, for it is the duty of the principal to *restrain* his agent from an abuse of the power vested in him.—Macn.

25. Where a Cast (*Sootars*) compelled a widow of a person deceased, at the instance of his relations, to give up her dower jewels, to be appropriated to his funeral expenses; and the widow sued one member of the Cast only (for recovery of their value), with whom the jewels had been deposited by her own brother in the presence of the Cast; the Court held, that he was only an agent for the Cast, and was therefore not personally responsible; for if agency were to be considered as creating responsibility, the widow's claim would be against the agent, who took up the matter immediately from herself, namely, her brother; and if the ultimate disposition of the property were to be the rule, then the Cast were responsible. *Moorar Khooshal* v. *Mt. Lukmee.* 5th Sept. 1822. 2 Borr. 349.—Romer & Ironside.

III. Sikh Law.

26. By the Sikh law, a son inheriting his father's estate together with the widow, may, as *Mukhtár* of the estate, be empowered by the widow to dispose of her share by Parol, in the same manner as an elder brother, or *Mukhtár*, of an undivided Hindú family may bind the whole property by his acts. *Doe dem. Kissenchunder Shaw* v. *Baidam Beebee.* Jan. 1815. East's Notes, Case 14.

ALIEN.

1. All foreigners born, and residents of every description, except prisoners of war, within the King's territories in Asia, are as much King's subjects as the same description of persons would be in England.[1] *Anon.* 10th Dec. 1813. East's Notes, Case 2.

[1] The above note is in the handwriting of Sir E H. East. Mr. Fergusson remarked that they had never been so held in the Supreme Court.

2. A native of the Péshwá's territory was held not to be an alien enemy, after the territory had been taken under the protection of the Honourable Company, by proclamation of the Commissioner of the conquered territory. Therefore, when an officer in the political department sent for and imprisoned a native of rank, after such proclamation, and confiscated his money, on the plea that it belonged to the ruling power, he was ordered by the Supreme Court at Bombay, on an action of trover by the native, to refund the money with six per-cent. compound interest, from the time of seizure. *Amerchund* v. *The East-India Company.* 28th Nov. 1826. Perry's Notes, Case 2.

3. The Government of Fort St. George has no inherent power to send an alien friend out of the presidency. *The King* v. *Lieut. Col. Symons and others.* 25th July 1814. 2 Str. 256.

4. The Court declared that lands and houses in Calcutta, held by an alien friend, did not pass by his will, although duly executed in the presence of three witnesses, and in such manner as to have been sufficient, according to the English law, to pass real estate; but as the Attorney General was not resident within the jurisdiction of the Court, and there was no party on behalf of the Crown, it was ordered that the receiver, appointed by the Court, should continue to receive the rents and profits of such lands and houses, and that the same should be placed to a separate account, to abide any claim thereafter to be made by or on behalf of the Crown. *The Martin Case,* 10th May 1836. 1 Fulton, 257.

5. Held, that the lands and houses which belonged to an alien, situated out of the local limits of Calcutta, did not pass by his will. *Ib.*

6. The introduction of the English law into a conquered or ceded country does not draw with it that branch which relates to aliens, if the acts of the power introducing it shew that it

was introduced, not in all its branches but only *sub modo*, and with the exception of this portion. The English law incapacitating aliens from holding real property to their own use, and transmitting it by descent or devise, has never been introduced into India so as to create a forfeiture of lands held in Calcutta or the Mofussil by an alien, and devised by a will executed according to the Statute of Frauds for charitable purposes. *The Mayor of Lyons and others* v. *The East-India Company.* 12th Dec. 1836. 1 Moore 175.

ALIENATION.

I. Of Ancestral Property.—See Ancestral Estate, *passim.*

II. Alienation of Property by a Hindú Widow.—See Hindú Widow, 11 *a et seq.*

ALIMONY.—See Husband and Wife, 86, 94; Statute, 18.

ALLOWANCE.

I. Generally, 1.

II. Málikáneh.—See Málikáneh, *passim.*

I. Generally.

1. *A* executed to *B* a *Karárnámeh* fixing for *B*'s support a certain allowance of money, which *B* should continue to enjoy, until, by his applications to Government, he should succeed in procuring restitution of his *Mírási*. *B* never obtained restitution of his *Mírási*, but sued *A* in the Provincial Court for arrears of the allowance, with interest thereon. The Provincial Court rejected *B*'s claim, and the Sudder Adawlut, on appeal by the heirs of *B*, held, confirming the decision of the Provincial Court, that as the allowance to *B* was gratuitous, the original claim of *B*, and the claim of his heirs for a continuance of the allowance granted by *A*, were equally untenable. *Jopully Appa Rao* v. *Syyud Abbas Alee Khan Bahadoor.* Case 24 of 1814. 1 Mad. Dec. 115.—Scott, Greenway, & Ogilvie.

2. Where the plaintiffs claimed the proprietary right of certain lands, and a *Swámí Bhogam*, and failed to prove that such right vested in them, or that the allowance was a *Swámí Bhogam*, their claim was rejected. But as the defendants had admitted that an allowance from the produce of the lands had, from time immemorial, been made by them for the support of the Pagoda, it was held that they were bound to continue that allowance. *Veeraraghoovien and others* v. *Toppa Moodely and others.* Case 11 of 1817. 1 Mad. Dec. 158.—Scott & Greenway.

3. An allowance granted by a *Karárnámeh*, there being nothing in the said deed to shew that it was meant to be hereditary, even if it be granted as a compensation for the relinquishment of a claim by the grantee, will cease at the death of the latter, there being no stipulation to the contrary; the continuance of such allowance to the widow of the grantee, and subsequently to an adopted son of the latter, is a voluntary act of the grantor, and does not establish any right of those persons, or either of them, to claim it. *Husan Ruza Khan Bahadoor* v. *Mohammud Muhdee Khan.* Case 12 of 1817. 1 Mad. Dec. 167.—Scott, Greenway, & Ogilvie.

4. The rent assets of an estate included an impost *(Gosain Táki)* levied as a pious allowance to the administrators of certain idols, such allowance having been disbursed to them by the *Zamindár*; the assessment was made on a calculation which excluded this item. The *Zamindári* having been split by public sales, one of the administrators sued the auction purchaser of one portion for his quota of the allowance. The claim was adjudged by the Zillah Court, and affirmed in the Court of Appeal, on the ground of prior decision and payment, by the Court of Wards on the

part of a minor *Zamíndár*. This judgment was reversed in the Sudder Dewanny Adawlut by two Judges, but not on identical motives. One (Rattray) did not find the title of the plaintiff proved, nor the fact of the levy of the impost on the section of the *Zamíndárí* held by the defendant; the claim, too, appearing to him to be barred by prescription, the defendant and his father having held many years without payment. The other (Halhed) thought that there was no proof that the revenue officers had confirmed any grant of the former *Zamíndár*, and that the charge on the rents of the section sold was not obligatory on the new *Zamíndár*, who had acquired by sale the entire *Zamíndárí* right, the allowance being consolidated in the general rent-roll. He also thought that the fact that the apportioned *Jama* on the estate sold, resulted after deduction of the allowance, did not sustain the claim.[1] *Ray Rádha Gobind Singh* v. *Gorachandra Gosain*. 15th April 1833. 5 S. D. A. Rep. 290.—Rattray & Halhed.

ALLUVIAL LANDS.—See River, 1 *et seq.*

ALMS.

1. A Brahman claiming a right to sit in a temple of *Mahadeo* and receive alms, was opposed by the *Gosain* in charge; but upon proof that the claimant's ancestors had enjoyed the privilege, the Court decided that it should be confirmed. *Shumbhoo Dhuneshvur* v. *Gooman Bhartee Assa Bhartee*. 1 July 1814. 1 Borr. 128.—Sir E. Nepean, Brown, Elphinston, & Bell.

[1] Mr. Halhed remarked in this case that "the *Gosain Táh* was deducted from the gross assets with village expenses and another impost, but such deduction did not bar the right of the *Zamíndár* to collect the same. Though the *Vrutti* may be considered as amongst the prohibited imposts, yet the revenue functionaries, in a manner, legalized it with other imposts in the *Hast-o-bud* statements The *Lot Bandi*, and other papers, shew that it was deducted and included in legal imposts, the right of the *Zamíndars*" Mr Halhed's judgment involves an important principle, which is likely to arise in other suits.

ÁLTAMGHÁ. — See Land Tenures, 8 *et seq.*; Limitation, 41.

AMÁNAT NÁMEH.—See Evidence, 118.

AMEEN.

1. Where an Ameen had not been sworn, previous to deputation under Sec. 17. of Reg. IV. of 1793, but had been subsequently sworn to his report; two Judges (Turnbull and Leycester) admitted a special appeal from the doubt; but one Judge (Walpole) judicially determined that the defect was cured. *Shah Nawaz Khan* v. *Clement*. 10th Jan. 1833. 5 S. D. A. Rep. 261.

AMENDMENT.

I. In the Supreme Courts.
1. *Generally*, 1.
2. *Of Writs*, 2.
3. *Of Bills*, 3.
4. *Of Declarations*, 13.
5. *Of Plaints*, 14.
6. *Of Pleas*, 23 *a*.
7. *Of Petitions of Appeal—See* Appeal, 27, 28.

II. In the Courts of the Honourable Company, 25.

I. In the Supreme Courts.

1. *Generally.*

1. All amendments must be specially brought before the notice of the Court, together with the state of the cause; and all processes of contempt will fall, unless the amendment be

allowed without prejudice to them. *Bhuggobuttychurn Mitter* v. *Gooroopersaud Nundy*. 2d Feb. 1828. Cl. R. 1834. 22.

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2. *Of Writs.*

2. In a writ of right, where the jurisdiction clause had been omitted, and the cause had been called on and opened, but no witnesses examined, the writ was allowed to be amended by adding the jurisdiction clause. *Taylor* v. *Mackillop*. 2d Term 1826. Cl. R. 1829. 208. Sm. R. 117.

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3. *Of Bills.*

3. The amendment of a bill taken *pro confesso* for want of an answer will be allowed at the hearing, without prejudice to the several process of contempt. *De la Cruz* v. *Goorachund Seal*. Cl. R. 1829. 335.

4. Attachment for want of appearance, issued the same day that the bill was amended, is irregular. All amendments should be brought specially to the notice of the Court. *Collypersaud Hazrah* v. *Mandubchunder Soor*. 1st Term 1828. Cl. Ad. R. 1829. 46.

5. A bill was dismissed for want of proceeding when more than three weeks had elapsed without amending, after an order obtained for that purpose, and the order to amend having been previously discharged. *Sed quære. Isserchunder Dutt* v. *Woodychund Dutt*. 19th March 1829. Cl. Ad. R. 1829. 49.

6. And where, under an order to amend, the complainant has not amended within six weeks given to him, the defendant will be allowed to move to dismiss the bill at once. At the same time it must be understood, that if the defendant do not move to dismiss, nor take any step, the complainant may still amend, notwithstanding the six weeks have expired. *Ramchurnloll* v. *Joyhissen Doss*. 16th July 1832. Cl. R. 1834. 39.

7. Where a rule had been obtained to stay proceedings in an original and amended bill, until a co-plaintiff had fully answered a cross bill which had been filed, and an order was afterwards obtained for leave to amend the original and amended bill, which was subsequently done by striking out the name of the co-plaintiff, for want of whose answer the rule to stay proceedings had been obtained; on an order *nisi* to discharge the order to amend for irregularity, the Court made such order absolute, with costs, holding that the order to amend was irregular, having been obtained without sufficient grounds pending the rule for stay of proceedings. *Comolmony Dossee* v. *Rajah Bunnowany Loll*. 11th July 1836. Clarke's Notes, 112.

8. A motion was made to take an amended bill off the file for irregularity: there had been a new engrossment, which did not shew how the original bill had been amended. The counsel for the defendant urged that the practice was to insert the amendment in red ink, running a line through the part of the original bill intended to be altered, where the alteration was sufficiently short to admit of it. The Court decided that such was not the practice at home, though convenient, and sometimes practised in India, but not uniformly; and they decided, that it was not a sufficient ground to take the bill off the file. However, they intimated to the Clerk of the papers that it would be a convenient course to pursue for the future. The motion was refused, with costs. *Case of the Burdwan Ranees*. Barwell's Notes, 14.

9. It is not regular for the plaintiff to file a re-engrossed amended bill, making no distinction between the amendment and original matter. *Gibson* v. *Chisholm*. 22d July 1844. 1 Fulton, 481.

10. After the death of a sole defendant, and the revival of the suit against his representatives, the plaintiff may amend his original bill. *Ib.*

11. Leave was given to withdraw

replication, and amend the bill generally, for the purpose of introducing new matter, which did not alter, but strengthened the complainant's original case, although the bill had been filed three years. *Nubkissen Sing* v. *Doyamoye Dossee.* Sept. 1829. Cl. Ad. R. 1829. 55.

12. After exceptions overruled, the complainant obtained an order to amend her bill, on amending the defendant's copy gratis. The usual words, on payment of costs, were not contained in the order, nor the undertaking to amend in three weeks, as required by the 8th Rule. The complainant did amend within three weeks, and caused a new copy to be served on the defendant's solicitor. No subpœna for a further answer was taken out; and the defendant not putting in a further answer, an attachment was issued. Held, that the attachment was irregular, and it was accordingly set aside, with costs and the costs of this application; the complainant consenting that the defendant should have two months to file a further answer. *Ranee Bussunt Coomaree* v. *Mudoosoodun Coopooreah.* Sittings after 1st Term 1839. Barwell's Notes, 120.

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4. *Of Declarations.*

13. The Court will allow a declaration in ejectment to be amended at the trial in favour of justice. *Doe dem. Tanjah Chitty* v. *Ahmed Khan Saheb.* 20th Sept. 1815. 2 Str. 308.

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5. *Of Plaints.*

14. Plaints in the Supreme Court are amendable, though they are in the nature of original writs. *Manickchund* v. *Cruttenden and others.* 2d Term 1796. Mor. 270.

15. A defendant pleaded in abatement another party who joined in the promises, now living at Serampore, &c., not named. Replication was demurred to. It was held, that the plea was good, and that the replication could not be supported; that the plaintiff should have stated the joint promise, and the reasons why he could not implead the other defendant in his plaint; and on motion to amend, it was refused, unless the defendant were let out of custody on filing common bail. *Sumboochurn Bhose* v. *Pereira.* 4th Term 1799. Sm. R. 5.

16. An amendment of the plaint, by adding parties named in a plea of abatement, was refused, and the action abated.[1] *Bennet* v. *Friar.* 9th Nov. 1799. Sm. R. 5.

17. A cause being at issue against one of two defendants, the other not having entered an appearance, motion was made to strike the name of the latter defendant out of the plaint, on the suggestion that he had renounced. The motion was refused; and it was held, that if a defendant should die before the cause had arrived at the stage in which, under the statute, his death might be suggested on the record, the action would abate. *Sands* v. *Mears and another.* 16th June 1800. Sm. R. 5.

18. Amendment of the plaint discharges sequestration, and puts an end to all process of contempt. And no amendment without prejudice to the sequestration shall be allowed, unless the amendment itself be brought before the Court. *Bhuggobuttychurn Mitter* v. *Soobulchunder Nundy.* 1st Term 1828. Cl. Ad. R. 1829. 47. Mor. 277. *Sreekissen Bysack* v. *Bissumber Pawn and another.* 1st Feb. 1828. Cl. R. 1834. 22. Mor. 278, note. *Bhuggobuttychurn Mitter* v. *Gooroopersaud Nundy.* 2d Feb. 1828. Cl. R. 1834. 22. Mor. 278, note.

19. There must be a new rule to plead after amendment of the plaint

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[1] Dickens adds this note, "*Sed quære de hoc* in the case of defendants, *et vid.* 25th Geo. III. c. 80. s. 24. which provides for such an amendment, viz. 'If *a new defendant*, by any *rule* or *order* of the Court, be *added* to a suit after the action is commenced, no new memorandum is necessary upon suing out process against such defendant.'"

before cause set down *ex-parte*. *Bindabun Mundell* v. *Panchoo Mistry*. 18th July 1826. Cl. Ad. R. 1829. 44.

20. When the cause was on the board, and it appeared that there were variances between the agreement set out in the plaint, and a translation of the original by the sworn interpreter, amendment was allowed on consent, the discharge of bail above, and the filing of common bail. *Ramgopaul Sing* v. *Isserchunder Bose*. 13th March 1828. Cl. R. 1834, 22.

21. An amendment of a plaint was allowed, after the cause was called on, to correct the date of the year of the Sheriff's bill of sale, upon payment of costs, and an undertaking to proceed to trial on the following day. *Doe dem. Ramkissen Sain* v. *Mahomed Sarrang*. 9th July 1828. Cl. R. 1834. 22.

22. After plea in abatement of non-joinder of other defendants, the plaintiffs were allowed to amend, (with reference to the statement of jurisdiction required in the plaint, whereby the plaintiff might be prejudiced if he were compelled to begin *de novo* against all,) by adding parties; and it was ordered that further summons should issue to the other defendants, and that the plea should be taken off the file. *Richardson and others* v. *Colvin*. 29th Oct. 1830. Sm. R. 5.

23. An error in the plaint on guarantie, the effect of which was to render it absolutely nonsensical, as it did not appear but that the debt had been duly paid by the principal debtor himself, was held not to be amendable. *Carr, Tagore, and Co.* v. *Macdonald*. 14th Nov. 1838. Mor. 292.

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6. *Of Pleas.*

23*a*. A plea in *assumpsit* for goods sold and delivered, that the goods did not correspond with the representation of the seller, is bad, but may be amended. *Schneider* v. *Morgan*. 12th June 1838. Mor. 243.

24. A rule *nisi*, obtained by a defendant to amend the record, by filing an additional plea after issue joined and cause set down, was discharged. The action was trespass, and the defendant had inadvertently pleaded the general issue only. *Buddinauth Saha* v. *Bracken*. 16th Nov. 1840. Mor. 401.

II. In the Courts of the Honourable Company.

25. Suit by the daughter of an *Aimahdár* against the son for a share of a *Aimah mauza*, as heir; to which the son pleads that the *mauza* fell to the mother in payment of dower, and that she conveyed it to him. The plea not being substantiated, the Sudder Dewanny Adawlut adjudged to the plaintiff her share of the land on a division of it according to the Muhammadan law of inheritance. But the decree was afterwards amended, the parties having represented the land (not in possession of either of them) to be held by other persons in mortgage, whereas the alleged mortgagees, when called upon, stated themselves to hold as proprietors, paying a fixed *Jama* to the *Aimahdár's* heirs. The Sudder Dewanny Adawlut therefore adjudged a share of the *Jama* receivable, and not of the land; leaving the claimant to contest the validity of the tenure of the possessors in a separate suit, should she think proper so to do.[1] *Bebee Jugun* v. *Bakir Ali and others*. 7th May 1804. 1 S. D. A.

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[1] According to the maxims of Muhammadan law, the respondent, or person denying the claim, may be required to make oath to the denial; and the refusal to do so is a confession of the demand. (3 Hed. 68. 70.) In this case the person who defended the action, setting up a claim founded on certain documents exhibited by him, was not respondent, but claimant, and the oath could not properly be tendered to him, but to the other party; and for this reason the law officers remark, that the plaintiff in the action (who denied that claim and the documents exhibited in support of it) had not declined to make oath.

Rep. 78.—H. Colebrooke & Harington.

26. Where a suit had been irregularly instituted, contrary to the provisions of the regulations, the Court being of opinion that the Zillah Judge ought to have pointed out the irregularity to the plaintiff, and allowed him to amend his plea, directed the institution fees in all the Courts to be returned. *Shamchund Baboo and another* v. *Rajender Mokerjee.* 26th Dec. 1811. 1 S. D. A. Rep. 363.—Harington and Fombelle.

27. It was held, that a plaintiff is at liberty to amend his original claim before it has been investigated. *Sreenarain Rai and another* v. *Bhya Jha.* 27th July 1812. 2 S. D. A. Rep. 23.—Harington and Stuart.

28. The decree of a Court below in favour of a Hindú widow for possession of her husband's landed property was amended on the ground of its not having specified the nature of her interest, and the mode in which the property should be disposed of after her death. *Pokhnarain* v. *Mt. Seesphool.* 5th Nov. 1821. 3 S. D. A. Rep. 114.—Shakespear.

ANCESTRAL ESTATE.

I. Hindú Law.

1. *Bengal Law*, 1.
   (a) *Alienation generally*, 1.
   (b) *Alienation by co-parceners*, 12*a*.
   (c) *Alienation of the shares of Minors*, 19.
2. *Mithila Law, &c.* 22.
3. *Attachment of*, 40.
4. *Mortgage of.* — *See* Mortgage, 22 *et seq.*
5. *Partition of.* — *See* Partition, *passim.*
6. *Succession to.*—*See* Inheritance, *passim.*

II. Muhammadan Law, 41.

I. Hindú Law.

1. *Bengal Law.*

(a) *Alienation generally.*[1]

1. Held, that a gift in the nature of a will, made by a *Zamíndár*, settling the whole *Zamíndári* on the eldest of four sons, subject to a pecuniary provision for the younger sons, was valid.[2] *Eshanchund Rai* v *Eshorchund Rai.* 23d Feb. 1792. 1 S. D. A. Rep. 2.—Stuart, Speke, & Cowper.

2. A father dying, leaving a begotten and an adopted son him surviving, bequeathed an ancestral *Talook* to the sons of his brother, and the Court upheld the will. *Case of Rajah Nobhissen.* 1800. Macn. Cons. H. L. 356.

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[1] With regard to the intricate subject of the alienation of ancestral estate, see 2 Coleb. Dig. 98. Dáya Bh c. ii. *passim* 1 Str H L 200. 1 Macn. Princ H L. 2. 4, *et seq.* 46. Macn. Cons. H L. 4, 5. 242 340. 2 S. D. A. Rep. 214, note. Dáya Cr San 96.

[2] Admitting the father's disposition of his estate in favour of his eldest son to have been an improper exercise of power on his part, as possessor of the hereditary patrimony, still the validity of a gift actually made by a father is affirmed by *Jímútá Váhana* (Dáya Bh. c ii. 29, 30). For since the gift of the entire estate to a stranger would have been valid (however blameable the act of the giver might be), the donation in favour of one son, with provision for the support of the rest, would seem to be equally valid, according to the doctrines received in the province of Bengal. And after extending to the case of sons, no less than to that of strangers, *Jímútá Váhana's* position, respecting gifts valid, though made in the breach of the law, it becomes necessary to the consistency of the doctrine equally to maintain that a father's irregular distribution of the patrimony, at a partition made by him in his lifetime, in portions forbidden by the law (Daya Bh. c. ii. 17.), shall, in like manner, be held valid, though, on his part, sinful. No opinion was taken from the law officers of the Sudder Court in this case, but it has been received as a precedent which settles the question of a father's power to make an actual disposition of his property, even contrary to the injunctions of the law, whether by gift, or by will, or by distribution of shares.—Coleb

3. It was held, that a Hindú "might and could dispose by will of all his property, moveable and immoveable, and as well *ancestral* as otherwise." *Ramtoonoo Mullick* v. *Ramgopaul Mullick.* 11th July 1808. Macn. Cons. H. L. 340. Cl. R. 1834. 103.

4. And this was affirmed on appeal by the Judicial Committee of the Privy Council. *Same* v. *Same.* 23d June 1820. 1 Knapp, 245.

5. It was held, that the gift by a father of the whole ancestral estate to one son, to the prejudice of the rest, or even to a stranger, is a valid act (although an immoral one), according to the law as received in Bengal. *Ramkoomar Neaee Bachesputtee* v. *Kishenkunker Turk Bhoosun.* 24th Nov. 1812. 2 S. D. A. Rep. 42.—Fombelle & Rees.

6. A *Hissahnámeh*, or deed of partition, made by a Hindú father, in which he allots to his sons portions of his estate, moveable and immoveable, ancestral and acquired, but which disposition was not carried into effect during his lifetime, is not binding on his sons after his death.[1] *Bhowannychurn Bunhoojea* v. *The heirs of Ramkaunt Bunhoojea.* 27th Dec. 1816. 2 S. D. A. Rep. 202.—Harington & Fombelle.

7. A Hindú, having a wife and two daughters, made a provision for them by his will, and left his ancestral and self-acquired property to his brother. The widow commenced a suit, but was advised to discontinue it. *Bustom Doss Mullick* v. *Rajindro Mullick.* 1822. Macn. Cons. H. L. 361.

8. A *Zamíndár*, in Bengal, sold part of his ancestral estate to his mother for her maintenance, on condition of her binding herself not to alienate the property, but to leave it to his son on her death. Held, that such a transaction did not terminate the *Zamíndár's* right in that property, nor bar the alienation of it by him and his mother jointly, to the prejudice of the eventual heir. *Kumla Kaunt Chukerbutty* v. *Gooroo Govind Chowdree and others.* 20th Jan. 1829. 4 S. D. A. Rep. 322. Cl. R. 1834. 106.—Leycester & Ross.

9. By the law as current in Bengal, a son has no right in the ancestral property inherited by his father during his father's life. *Ib.*

10. A Hindú, who has sons alive, can, without their consent, sell, give, or pledge immoveable ancestral property situate in Bengal; and can, without their consent, by will, devise, prevent, alter, or affect their succession to such property.[2] *Doe dem. Juggomohun Roy* v. *Neemoo Dossee.* 21st Nov. 1831. Mor. 90. Cl. R. 1834. 101.

11. By the law as current in Bengal, the gift by the proprietor of his patrimonial estate to his paternal relation, whilst his sister or his sister's sons exist, is valid.[3] *Radhanath Chowdree* v. *Mt. Kishen Rannee Dossea and another.* 4th Aug. 1835. 6 S. D. A. Rep. 35. — Braddon & Robertson.

12. A sale of ancestral property, executed by a Hindú while a prisoner in jail under a criminal sentence, was declared to be valid by the Bengal law. *Kali Doss Neogee* v. *Chunder Nath Rai Chowdry.* 20th July 1843. 7 S. D. A. Rep. 128.—Tucker, Reid, & Barlow.

(*b*) *Alienation by Co-parceners.*

12*a*. A gift by a co-heir to ances-

[1] The decision in this case is not repugnant to the former ones. In fact, it went upon a different question, viz. the non-delivery of possession; and it appears that Macnaghten was not warranted in referring to this case as the latest *decision* on the question, "wherein it was determined that an unequal disposition of ancestral immoveable property is illegal and invalid."

[2] This decision, made on a reference to the Judges of the Sudder Dewanny Adawlut, settles the question as far as regards Bengal and the case of *Bhowannychurn* v. *Ramkaunt Bunhoojea* must be considered as superseded by it

[3] 2 Macn. Princ H. L 229.

[4] See 1 Coleb Dig. 455. 2 Do. 56. 104, 105

tral estate is valid as regards his own share. *Rajbulubh Bhooyan* v. *Mt. Bunneta De.* 14th Aug. 1801. 1 S. D. A. Rep. 44.—Lumsden & Harington.

13. *A*, the manager of a joint *Talook*, held in his name, was put under confinement by the servants of the superior *Zamíndár* for a balance of revenue, for which, seeing no other mode of discharging it, he executed a conveyance of the *Talook* to *B* (the *Zamíndár's Mukhtár-Kár*), voluntarily, but without any express authority from the other sharers, who, however, allowed *B* to hold possession undisturbed for ten years. In a suit against *B* after this period for the recovery of the *Talook* on the ground that the conveyance was void as obtained by duress, and executed by one only of the sharers, the Sudder Dewanny Adawlut determined, in conformity with an opinion of their Pandits, that the title of *B* under the conveyance was good.[1] *Prannath Das and others* v. *Calishunkur Ghosal.* 29th Aug. 1801. 1 S. D. A. Rep. 45.—Lumsden & Harington.

14. A co-parcener may give or alienate his own share of joint property. A gift by *A* to his son of a *Talook* which he had received from his father while sole *Zamíndár*, was upheld, as the gift of the *Talookdári* tenure, which is distinct from the *Zamíndári* right, and usually held as a dependency paying rent to the *Zamíndár*, did not destroy the right of the brother of *A* in the *Zamíndári*. Certain alleged acts of ownership on the part of *A*, after the date of the deed of gift, did not, in the opinion of the Court, vitiate the gift, as they might be no more than acts of guardianship, which it is natural and proper for a father to perform during the minority of his son. *Anund Chund Rai* v. *Kishen Mohun Bunoja and others.* 4th Dec. 1805. 1 S. D. A. Rep. 115.—H. Colebrooke and Harington.

15. By the Bengal law the alienation of property affects the share of

215. 519. 3 Do. 433. Dáya Cr San. c. xi. 1 Str H L 200 Mit. c. i s. i 27—30 32. Dáya Bh. c. ii. 27, 28. 2 Str. H. L. 343. 348, 349. 433. 1 Macn. Princ. H. L. 5. Steele, 210, 211. App A. 39.

[1] The subject of alienations by one of several co-parceners, without consent of the rest, is adverted to by *Jimútá Váhana* (Dáya Bh. c. ii. 27), and treated at more length in *Jagannátha's* Digest (2 Coleb. Dig. 56. 215.) The opinion of the last-mentioned compiler, and of the authors quoted by him on the general question of such alienations, decidedly is, that the sale or transfer is valid, so far as concerns the seller's own share, but not so for the shares of his co-heirs, who were not consenting. *Jimúta Váhana* is not explicit; but it does not appear from his text, or from the observations of his commentator, that his doctrine can be understood as going any farther than to maintain the validity of a sale or alienation by a father of a family, for the whole patrimony, without consent of his sons, or by a co-heir for his own share of the inheritance, without the assent of his co-parceners This remark is here made, because the authority quoted by the law officers, viz. a passage of *Vyúsa*—"Even one sharer may make a gift, mortgage, or sale of immoveables, for the benefit of the family, and especially for religious purposes"—might be understood in a more extended sense than it can safely be taken. Modified, however, as the opinion of the law officers expressly is, by the circumstances of the case, the single parcener who made the sale in question having been sole manager of the *Talook* on behalf of himself and co-heirs, and registered singly as owner of it, and having sold it for the liquidation of arrears of revenue due from that very *Talook*, for which, too, the land itself was answerable, and the co-parceners having acquiesced in his act by their silence during a period of ten years, that opinion as to the validity of the sale appears unobjectionable. The law recognizes the family arrangement by which one brother takes entire possession of the patrimony, and conducts the affairs of the family like a father (Dáya Bh. c. iii. s. i. 15). In this case one of the coparceners having done so, and being the recorded proprietor and ostensible manager of the estate, and having sold it, not for his own benefit, but for the discharge of the revenue for which it was answerable, must be considered to have made the sale on the part of his co-heirs, as their agent and representative. It should be observed, that the mode of confinement which appears to have been practised in this instance, was no unusual exercise of authority by a superior landholder, at the remote period when the transaction took place, but has since been effectually prohibited.—Coleb.

the actual alienor, and not those of the other co-parceners. *Ramasamy and others* v. *Sasachella and another.* 19th Oct. 1813. 2 Str. 234.

15 *a.* By the law of Bengal, a sale by a co-parcener of his share of joint property is valid.[1] *Ramkunhaee Rai and others,* v. *Bung Chund Bunhoojea.* 24th Feb. 1820. 3 S. D. A. Rep. 17.—Fendall and Goad.

16. According to the Bengal law, a co-parcener may dispose, by gift or otherwise, of his own undivided share of ancestral property, notwithstanding he may have a daughter or daughter's son living.[2] *Bhowaneepershad Goh* v. *Mt. Taramunee.* 28th Feb. 1822. 3 S. D. A. Rep. 138.—C. Elliott.

16 *a.* Semble, A Hindú cannot give, by deed, his ancestral property to his brother, to the exclusion of his wife and daughter.[3] *Raj Chunder Das* v. *Mt. Dhunmunee.* 24th May 1824. 3 S. D. A. Rep. 361.—Ahmuty.

17. If one of four brothers make a deed of sale of the whole patrimonial property, it is good as far as his share is concerned. Note by Sir F. Macnaghten in *Doe dem. Gungaparain Bonnerjee* v. *Bulram Bonnerjee.* 20th July 1818. East's Notes, Case 35.

17 *a.* The manager of an undivided estate cannot alienate the shares of his co-parceners without their consent. *Sakhawat Hosen* v. *Triloh Singh and others.* 13th Jan. 1834. 5 S. D. A. Rep. 338.—H. Shakespear.

18. The manager of a Hindú family has power to bind the rest by a mortgage, where the money is raised for family purposes, and *bonâ fide* so applied. *Aushutos Day* v. *Moheschunder Dutt and others.* 8th July 1840. 1 Fulton, 380.

(c) *Alienation of the shares of Minors.*

19. It was held, that an elder managing brother of a joint estate, having made a bill of sale of part of it during the nonage of his younger brother, the latter may, when he comes of age, confirm the sale, either by express assent, or impliedly, by lying by without objection for five years and upwards after he came of age, having knowledge of the fact by the notoriety of it in the family at the time, and by an entry of the purchase money made in the books of the joint estate; and, during that time of lying by, seeing the purchaser laying out money in the improvement of the estate by erecting buildings on the land, &c.[4] *Doe dem. Bhobannypersaud Ghose* v. *Teerpoorachun Mitter.* 20th March 1817. East's Notes, Case 61.

20. Where the lands of a Hindú infant were sold, without necessity on His part, by the principal manager of the joint undivided estate, it was held, that an acquiescence by him for ten years after he came of age, without any act done to disaffirm it, was a confirmation of such sale, and would pass

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[1] The Dáya Tatwa of *Raghunandana* expressly oppugns the doctrine of partial rights, although the author afterwards, with some appearance of inconsistency, asserts the right of a co-parcener to sell his own share of an undivided family estate: on this latter point there is, indeed, no difference of opinion among Bengal writers. For more detailed information on the subject, see note at the bottom of pages 5 and 6 of Colebrooke's translation of the Dáya Bhága.

[2] In support of this doctrine the Pandits cited the following half stanza of a text of *Nareda*, cited in the Dáya Bhága, "Should they give or sell their own shares, they do all that as they please, for they are masters of their own wealth." The first stanza of the text is, "When there are many persons sprung from one man, who have duties apart, and transactions apart, and are separate in business and character, if they be not accordant in affairs," &c It does not, however, appear, that the omission of the first stanza of the text was made with any improper design, or that there was any inaccuracy in the doctrine here laid down, as far as the law of Bengal is concerned. Colebrooke observes, in a note to his translation of the Dáya Bhága (see page 33), that the above text of *Náreda*, as quoted by *Jímútá Vahana*, is apparently understood as relating equally to divided and undivided shares.—Colcb.

[3] *Sed quære,* according to the enlarged interpretation of *Náreda's* text, by *Jimútá Vahana.* See Daya Bh. c. ii. 31, note.

[4] Mit. c. i. s. i 29

a good title. *Doe dem. Mongooney Dossee and another* v. *Groopersaud Bose.* 27th Jan. 1820. East's Notes, Case 111.

21. A deed of assignment executed by three brothers of a joint family, one of whom is an infant, will not bind the heirs of the infant. *Doe dem. Brijogopee Dabee* v. *Seeboosoondery Dabee.* 1840. 1 Fulton, 368, note.

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2. *Mithila Law, &c.*

22. By the law as current in Tirhoot, a father cannot, by a deed of gift, unaccompanied by possession, give away the whole ancestral property to one son, to the exclusion of his other sons.[1] *Sham Singh* v. *Mt. Umraotee.* 28th July 1813. 2 S. D. A. Rep. 74.—H. Colebrooke & Stuart.

23. But Semble, The deed of gift would be valid if seizin had been given. *Ib.*

24. According to the law as current in Behar, joint property is not a fit subject of transfer; for property cannot be sold or given away until it is defined and ascertained, which cannot be done without a division.[2] *Nundram and others* v. *Kashee Pande and others.* 30th June 1823. 3 S. D. A. Rep. 232. — Leycester & Dorin.

25. A sale of joint landed property, in Mirzapore, by one partner without the consent of the rest, was set aside as contrary to the Hindú law[3], and there being evident overreaching on the part of the purchaser. *Sheo Surrun Misser* v. *Sheo Sohai.* 27th May 1826. 4 S. D. A. Rep. 158.—Leycester & Dorin.

26. It was held, that by the law as current in Tirhoot, the sale of joint undivided property is invalid, without the assent of all the sharers; and in this case the Pandits declared that such sale was not valid, even for the seller's own share, while undivided. *Raja Bydianund* v. *Jydutt Jha.* 4 S. D. A. Rep. 160, note.

27. A daughter cannot alienate by gift her ancestral property, to the detriment of the other heirs of her father. *Mt. Gan Koowur and another* v. *Dookhurn Singh and another.* 3d Feb. 1829. 4 S. D. Rep. 330.—Rattray.

28. Semble, By the law as current in Behar, a father and son have an equality of right over ancestral property: hence there is that community which renders the assent of the sons to the father's alienation indispensable. *Gopal Chand Pande and another* v. *Babu Kunwar Singh.* 3d April 1830. 5 S. D. A. Rep. 24.—Ross.

29. Semble, however, that a father may alienate, by gift, a small part of the ancestral estate for pious purposes, even without the consent of his sons. *Ib.*

30. *A*, *B*, and *C* were brother's sons, and tenants in common of some ancestral lands in Tirhoot. *A*, several years before his death, gave his general estate, by deed, to D, his sister's son, and had his name recorded. On his death *B* and *C* sued for *A's* interest in the undivided lands, and also for his personal estate, and certain villages bought in *A's* name, which they alleged must be held to be an accretion to the ancestral estate. The Sudder Dewanny Adawlut confirmed the decision of the Provincial Court, passed on an opinion of its

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[1] 1 Macn. Princ. H. L. 10. Macn. Cons. H. L. 274.

[2] This decision was confirmed on a review of judgment 10th Feb. 1825, by Messrs. Harington and Martin. By the law of the Mitacshará, no distinct right is recognized until after partition, and the principle of *factum valet* is not allowed. Mit c. i. s. i. 30. 1 Str. H. L. 201. 1 Macn. Princ H. L 5.

[3] In this case the judges stated that "The Hindú law, as laid down in *Vyavashtas*, delivered in former cases, does not permit alienation of land, held jointly by several *Patidárs*, or owners, to be made by one without the assent of the others, nor indeed does such alienation hold good for the aliening partner's individual share even, without the assent of the rest.

Pandit, which awarded to *B* and *C* the right to *A*'s share in the common villages, because undivided, and the gift thereof, according to the law current in Tirhoot, was consequently illegal; but dismissed the claim to the rest, viz. the purchased villages, because sole acquisition (on presumable admission of the plaintiffs) was inferrible, and continued adverse possession of the donor and donee established. *Jivan Lal Singh and others* v. *Ram Govind Singh and another.* 24th Jan. 1832. 5 S. D. A. Rep. 163.—Rattray.

31. On the death of *A* (a Hindú of Behar) the name of *B*, his widow, was substituted in regard to the lands of which she had been recorded as owner. At the end of ten years *C* and *D*, heirs in the male line of a brother of *A*'s great grandfather, sue to recover the whole, and succeed, the widow being entitled to maintenance only, on proof that part descended from a common ancestor, and that they and their ancestors had enjoyed a portion for support, and on presumption that the accessions were acquired out of the profits of what was ancestral, and in co-parcenary for the behoof of all the kinsmen. *Ghanshám Kumari* v. *Govind Singh and others.* 10th May 1832. 5 S. D. A. Rep. 202.—Walpole.

32. The elder of two brothers contracting for the sale of a family house, the bill of sale being to be delivered to the purchaser upon the younger brother's signing it, and the purchase money being paid, and the younger brother refusing to sign; it was held, that the younger brother being a minor at the time, his interest was bound by the act of his elder brother, and his joining in the sale unnecessary.[1] *Anon.* Jan. 1811. 2 Str. 332.

33. The property of an undivided Hindú family, aliened by the managing member of it, without the consent, not for the benefit, and contrary to the interest of the other members, is recoverable by the other members, as against the alienee. *Ramasamy and others* v. *Sasachella and another.* 19th Oct. 1813. 2 Str. 234.

34. According to the Mitácshará and other law tracts current in the Western provinces, the sale by a Hindú widow, who has no son, to her daughter's son, of joint property derived from her husband, is invalid.[2] *Sheoburt Sing* v. *Mt. Ghosa and others.* 10th March 1836. 6 S. D. A. Rep. 60.—Halhed.

35. According to the law as current in Behar, the alienation by a father of immovable ancestral property, without the consent of the sons, except on proof of necessity, is illegal.[3] *Motee Lal* v. *Mitterjeet Singh and others.* 29th June 1836. 6 S. D. A. Rep. 71.—Robertson & Stockwell.

36. Held, that by the Hindú law as current in Tirhoot, the sale of joint undivided property, without the consent of all the sharers, is invalid. *Sheo Churn Lal and another* v. *Jummun Lal and others.* 6th July 1837. 6 S. D. A. Rep. 176.—F. C. Smith. *Sheo Suhaye Sahoo* v. *Sreekishen Sahee and others.* 16th June 1842. 7 S. D. A. Rep. 105.—Barlow.

37. A *Zamíndári* granted to an

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[1] On this case Mr. Colebrooke remarked: "This opinion seems to be founded on the Mitacshara (c 1 sec. 1 29), but should be restricted, as it there is, to a case of indispensable necessity for the common interest. The purchaser must take care that the purpose of the sale be such as will maintain its validity under the provision of the law."

[2] By the Hindu law as current in the Western provinces, the widow does not succeed to the inheritance of her husband, who was living as a member of a joint and undivided family, and of course is incompetent to dispose of it in any way But, Semble, Otherwise were the property separate.

[3] Thus notwithstanding the power of a father, by the Bengal law, over ancestral property, it may be considered as decided that his power is limited and restricted under the law as received in Behar, and generally where the Mitacshara is respected

individual by the Government was held to be ancestral property, because such grant was expressly made to him in lieu of his former privileges, which were manifestly privileges that had descended to him from his ancestors: the estate, in fact, was nothing more than the wreck of the possessions enjoyed by his forefathers, and as such he was not competent under the Hindú law to divest his heirs of their right of succession. *Chetty Colum Prusunna* v. *Chetty Colum Moodoo.* Case 7 of 1823. 1 Mad. Dec. 406.—Cochrane & Gowan.

38. Where the *Kulkarn* of a village was sold to the respondent by the owner, with the consent of the coparcener (appellant's father), then absent, and where the respondent was ousted of possession by the appellant; it was held, that the sale was good as against the appellant, his father being allowed a right of action to set aside the alleged sale, if false.[1] *Babjee Bullal Vanus* v. *Ramajee Narayun Kurmurkur.* 15th Jan. 1823. 2 Borr. 642.—Romer & Ironside.

39. A Hindú died, leaving a son and grandson. Held, that the son could not alienate the ancestral property without the consent of the grandson, and that the grandson might put in his claim for his half share, in the event of his father wishing to alienate it. *Duyashunker Kasseeram* v. *Brijvullubh Moteechund.* 13th Aug. 1830. Sel. Rep. 41.

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3. *Attachment of Ancestral Estate.*

40. It was ruled that a son's share of ancestral property, specially appropriated for his maintenance, is not attachable in satisfaction of his father's debts during the lifetime of the latter. *Amrut Row Trimbuck Pehtay* v. *Trimbuck Row Amrutayshwur and another.* 19th Sept. 1839. Sel. Rep. 218.—Pyne and Greenhill.

[1] Mr. Borradaile remarks in a note (2 Borr. 647.): "It will be a good opportunity for ascertaining both the Hindú law and custom of the country, regarding the legality of the alienation of the heritage by one co-parcener alone, under what circumstances, whether with or without the attestation of the other co-parceners, and whether the consent of the son (appellant) to his father's alienation of ancestral property, either before or after separation, is requisite or not."

II. Muhammadan Law.

41. By the Muhammadan law, a gift of ancestral property, held as a joint and undivided estate, by one of the sharers, is invalid, where no actual partition has taken place. *Mt. Banoo Beebee* v. *Fukheroodeen Hosein.* 3d May 1816. 2 S. D. A. Rep 180.—Harington & Fombelle.

ANNUITY.

1. An annuity granted by the *Zamíndár* of Nuddea to his younger son, on a devise of the *Zamíndárí* to his eldest son, and made payable from the *Musháhara*, or proprietary allowance received from Government while the *Zamíndárí* was under the management of the public officers, was adjudged to be demandable from the possessor of the *Zamíndárí*, who, without the consent of the annuitants, relinquished the *Musháhara*, and took on himself the management of the *Zamíndárí*, with the consequent responsibility for the revenue assessed upon it. The annuity was held not to be liable to reduction on account of the public sale of parts of the *Zamíndárí* under such circumstances; and as the right of the annuitants had been twice adjudged, and appeals were preferred merely to protract the period of payment, the Zillah Court was ordered to enforce the punctual payment of the annuity in future, by a sale of lands, if necessary. *Raja Grischund Rai* v. *Sumbhoochund Rai.* 9th May 1806. 1 S. D. A. Rep. 133.—H. Colebrooke & Fombelle.

2. *A* has an annuity payable out of *B*'s estate. In a dispute respecting the rate, *B* entered into an engage-

ment to pay to *A* the same sum annually as might be decreed by the Court to other annuitants under similar circumstances. Held, that the engagement was binding on *B*, from the date of the execution of the engagement, but that it was not to have reference to previous balances, the engagement not containing any retrospective provision. *Rajah Greesh Chund Roy* v. *Omeshchunder Roy and others.* 26th May 1813. 2 S. D. A. Rep. 62.—Fombelle & Stuart.

3. A judicial order for the payment of a monthly stipend to a certain individual is not held to entitle his heirs to claim it after his death. *Tohfa Dibia* v. *Pirthu Chund Rai.* 20th Jan. 1822. 3 S. D. A. Rep. 134.—Goad & Dorin.

4. It was held, that the gift of an annuity made by a *Zamíndár*, during his lifetime, to a younger son, in lieu of his share of the *Zamíndári*, is hereditable. *Rajah Geereeschunder Rai* v. *Rajah Oomesh Chundur Rai.* 29th Jan. 1829. 4 S. D. A. Rep. 328.—Rattray.

ANUMATÍ PATRA.—See Action, 19; Adoption, *passim.*

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APPEAL.

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I. Powers of the Judicial Committee of the Privy Council.

1. *Generally.*

1. Memorials to the King in Council, complaining of, and appealing against, a scheme for the distribution of part of the booty taken in the Dahkin, which had been approved of by the Lords Commissioners of the Treasury, having been referred to a Committee of Council, they, without hearing the memorialists upon the merits of their cases, advised His Majesty to refer the consideration of them to the Lords Commissioners of the Treasury. *Case of the Army of the Deccan.* 10th July 1833. 2 Knapp, 103.

2. Semble, That the Judicial Committee of the Privy Council will not exercise jurisdiction as a Court of Appeal from the decisions of the Lords Commissioners of the Treasury, as to grants by the Crown of property accruing to it by virtue of its prerogative. *Ib.*

3. Semble, The Judicial Committee of the Privy Council will not entertain an appeal merely for costs. *Mt. Keemee Baee* v. *Latchman-das Narrain-das.* 5th Dec. 1837. 1 Moore Ind. App. 470.

4. Semble, Where a matter which is not strictly an appealable grievance has been referred by Her Majesty to the Judicial Committee, their Lordships may, under the reservations contained in the 3d and 4th Will. IV. c. 41., advise Her Majesty to grant the petitioner leave to appeal. *Morgan* v. *Leech.* 12th Feb. 1841. 3 Moore, 368. 2 Moore Ind. App. 428.

II. From the Supreme Courts.

1. *When allowed.*

5. *Dictum* of Impey, C. J.—The defendant, by consent, may relinquish the right to appeal; and on an appeal the *rule for judgment*, as of a time passed by consent, would be sent with the judgment, and would have the same *operation* as a consent *not to move* in *arrest* of judgment. If parties here would, by consent, preclude themselves from an appeal, we should, on that consent, refuse their petition of appeal. *Radacaunt Gose* v. *Gungagovind and another.* Hyde's Notes. 10th Feb. 1778. Sm. R. 31. Mor. 47.

6. An appeal against a nonsuit will be allowed, even where its utility is questionable. *Lyon* v. *Chaund Holdar.* Hyde's Notes. 11th June 1782. Mor. 47.

7. An appeal will be allowed against an order on the equity side of the Court discharging an order *nisi* for confirming an award. *Rajah Ramlochun Roy* v. *Bulram Ghose.* Hyde's Notes. Chamb. Notes. 24th Jan. 1785. Sm. R. 63. Mor. 49.

8. An appeal was allowed against an interlocutory order in equity overruling a plea.[1] *The East-India Company* v. *Barton and others.* Chamb. Notes, 14th July 1788. Chamb. Notes, 7th Aug. 1788. Sm. R. 64. Mor. 51.

9. *Quære*, Whether a mere question of costs is appealable where they exceed 1000 pagodas? *Same* v. *Same.* Chamb. Notes, 14th July 1788. Mor. 51.

10. The demand in the bill of complaint was for a sum exceeding 1000 pagodas, claimed on a promissory note; and the defence set up was, that the instrument was a forgery. The bill was *dismissed with costs*, on the ground of insufficient proofs of jurisdiction; but because it did not sufficiently appear that *the taxed costs would amount* to 1000 pagodas, the Court refused to allow an appeal.[2] *Ramcant* v. *Scott and another.* Hyde's Notes, 4th Feb. 1784. Sm. R. 62. Mor. 52, note.

11. An issue had been directed to be tried at law from the equity side of the Court, in which issue the defendant in equity was the plaintiff at law, and at the trial was nonsuited. An application was afterwards made, both on the plea and equity side, to set aside the nonsuit, and grant a new trial, which was refused. The plaintiff then presented his petition of ap-

[1] In this case Chambers, C. J, observed, that "it did not follow as a consequence of this decision that every order in an equity cause might be the subject of an appeal, for if, upon an order for further time to answer, or like order being made, an advocate were to present an appeal against it, he should consider it as trifling with justice and with the Court, but that he thought an appeal would lie from any interlocutory order in equity, by which the final determination of the suit might be materially affected" In the argument of this case the question was raised, as to whether a mere question of *costs* is appealable, but the point was not decided by the judgment, which was given on the ground, that, as the plea went to the merits generally, the "matter in dispute" was, in fact, the whole subject matter of the suit.

[2] It seems that this appeal ought to have been allowed, as the dismissal of the bill determined the whole suit, and, besides the costs, a sum far beyond the limited amount was in dispute.

peal against the nonsuit, and also against the order refusing the new trial. The appeal was allowed.[1] *Rogonauth Chund* v. *Soroopchund Addy*. Chamb. Notes, 14th Feb. 1797. Sm. R. 19. Mor. 55.

12. It was held, that there can be no appeal to the King in Council from a judgment of nonsuit, where the nonsuit had left it uncertain what the damages, if any, ought to have been. *Mandeville* v. *Hayes*. 14th Dec. 1798. 1 Str. 1.

13. But Strange, R., thought that it would be different in an action of *assumpsit*, or the like, where the value of the matter in dispute appears by reference to some *tertium quid*, as a note of hand, or a balance of an account. *Ib.*

14. A special appeal upon terms, however, may be admitted by the King in Council under the Charter. *Ib.*

15. Held, that an appeal did not lie from an interlocutory order, under the Charter of the Court of the Recorder at Madras; but at the end of the cause the party dissatisfied with the judgment might object to any order by which he could shew that he had been finally aggrieved.[2] *Johnston* v. *The East-India Company*. May 1799. 1 Str. 21.

16. Strange, R., thought that under the Bengal Charter of the Supreme Court, an appeal would lie from any rule or order, whether interlocutory or final, in any way affecting the suitor's interest. *Ib.*

17. *Obiter dictum*, an appeal against a verdict will be allowed, the verdict being given in an issue, and the appeal being against the verdict *only*.[3] *Woomeschunder Paul Chowdry* v. *Sreemutty Woojulmoney Dossee*. 24th July 1826. Cl. R. 1829, 172.

18. Semble, That an appeal from a final judgment or decree will not open prior interlocutory decrees or orders, in respect of which the time for appealing has elapsed. *The East-India Company* v. *Syed Ally Khan*. 14th July 1830. 1 Knapp, 331, note.

19. Semble, An appeal will lie from interlocutory judgments as well as from final ones. *Ib.*

20. Where a Court below has granted leave to appeal in a case in which they were not authorised by their Charter to do so, it is not sufficient for the appellant to present the common petition of appeal to the King in Council; but a special application for leave to appeal must be made to the King in Council under such circumstances. *Ib.*

21. Where a party has lost his right of appealing, according to the Charter of a Court below, through the erro-

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[1] This case is again inserted in Chambers' Notes (26th Oct. 1797), where it is said, "This petition, entitled an amended petition of appeal, is against several distinct interlocutory orders and decisions, one of them made very long after the rest, and only one within six months previous to its being preferred before a Judge, and filed by his order during the late vacation." But see *infra*, *The East-India Company* v. *Syed Ally Khan*. Case 18 *et seq.*

[2] This case was decided by the Court of the Recorder at Madras, but the words of the Charter of that Court, and upon which the decision was made, remain unaltered in the Charter of the Supreme Court. And see *infra*, Case 23.

[3] But notwithstanding this case, no petition of appeal can be allowed against a verdict. The appeal is directed to be by persons aggrieved by any judgment, decree, order, or rule of the Court, words which clearly do not comprehend the mere finding of a verdict, whether it be on the common-law side of the Court, and afterwards to be carried into effect by a judgment, or (as in the above case) upon an issue directed to inform the Court sitting in equity what decree or order it is to pronounce. It is not certain that the judgment, decree, or order, will correspond with the finding; but if it should do so, the effect of an appeal against the verdict is obtained by an appeal against the judgment or order founded upon it; for all the evidence and proceedings had in the cause appealed are to be transmitted to the Privy Council, and they have therefore the fullest opportunity of deciding on the correctness of the verdict. Minute relating to appeals filed by order of the Court. 20th Jan. 1836. (Ryan, C. J., Grant and Malkin, Js.) Mor. 62.

neous construction of it by the Court, the Judicial Committee of the Privy Council will, upon a special petition, grant such party leave to appeal. *Ib.*

22. Upon an issue at law directed from the equity side of the Court a verdict had been found for the defendant, and the plaintiff having first applied (on the equity side) for a new trial, which was refused, obtained an order *nisi* that her petition of appeal against the order refusing a new trial be allowed.[1] *Sreemutty Seboosoondery Dossee* v. *Sreemutty Comulmoney Dossee.* 28th March 1839. Mor. 66.

23. The right of appeal given by the Charters of Bengal, Madras, and Bombay, is not confined to cases where a right or duty is finally decided, but includes interlocutory judgments, decrees, or decretal orders. Such appeal does not, however, extend to the finding of a jury upon issues directed from the equity side of the Court; no motion for a new trial having been made, nor exceptions taken to the Master's report founded upon the verdicts in such issues.[2] *Nathoobhoy Ramdass* v. *Mooljee Madowdass and others.* 7th Feb. 1840. 3 Moore, 87. 2 Moore Ind. App. 169.

24. *Dictum* of Peel, C. J.—"There is no doubt that an order or judgment on consent cannot be appealed from, not coming under the class of orders by which the party against whom it is made can be said to be aggrieved. *Rogober Dyal* v. *The East-India Company.* 6th Feb. 1840. 1 Fulton, 146.

25. A party in contempt may be heard when praying leave to appeal. *Sreemutty Ranee Hurrosoondry Dossee* v. *Cowar Kistonauth Roy and others.* 27th Oct. 1842. 1 Fulton, 85.

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2. *Petition of Appeal.*

26. Where a petition of appeal contained a summary of the arguments on the part of the plaintiff, because the Charter requires the reasons for the appeal to be set forth in the petition, Impey, C. J., said, "it was not drawn in a clerk-like manner, for it ought to have stated the points only, and not the reasoning, as this petition did." *Commaul ud deen Alli Khan* v. *Goring and others.* Hyde's Notes, 21st March 1777. Mor. 63, note.

27. The Court will not refuse to receive a petition of appeal though it contain passages not strictly true, or contrary to the evidence; but the Court will direct the defendant's counsel to correct such passages. *Prawnkissen Sing* v. *Baranassy Gose.* Chamb. Notes, 26th March 1787. Mor. 63, note.

28. A petition of appeal containing matter considered by the Court as impertinent and improper (such as the names and arguments of counsel, the judgment, and that, too, incorrectly taken of the Judges, &c.), the Court desired the advocate who signed it to correct it, and tender it again to the Court. *Manickchund Mahajun* v. *Pott.* Chamb. Notes, 1st Nov. 1796. Sm. R. 69. Mor. 63.

28 *a.* In a petition of appeal, a statement of the Judge's reason was struck out; but the Court refused to order an affidavit, set out nearly *in hæc verba*, in the body of the petition, to be struck out, though they expressed their disapprobation of it.[3]

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[1] In this case Ryan, C. J., observed, "This Court has decided, that no appeal against a *verdict* shall be allowed; and we still adhere to that determination. But we are not disposed to extend the doctrine to the present case The doctrine itself, however, we still uphold; and it is observable that it does not overrule any express decision of the Court, for the opinion expressed in *Woomeschunder Paul Chowdry* v. *Woojulmoney Dossee* was merely an *obiter dictum*, the order having been, in fact, upon other grounds, *discharged* The power of appeal is given as a privilege, and ought to be construed liberally"

[2] It seems that the word "determination," in the Charters of Madras and Bombay, is equivalent to the "decree or decretal order" of the Bengal Charter.

[3] No petition of appeal ought to contain any statement of observations made by

Lolljee Mull v. *Rajchunder Chowdry*. 25th Nov. 1835. Mor. 61.

29. A motion on the equity side that the petition of appeal be allowed should be for an order *nisi*, and not on notice. *Comolmoney Dossee* v. *Seboosoondery Dossee*. 7th May 1839. Mor. 294. *Radakissen Mitter* v. *The Bank of Bengal*. 22d July 1839. Ib. note.

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3. *Security.*

30. Where a petition of appeal presented on behalf of the defendant in a cause has been filed before the issue of the writ of execution, motion must be made on the other side that execution do issue; in order to which, the Court will require the plaintiff to give security to the appellant to perform such decree as the King in Council shall make on such appeal, and also to refund the amount of the judgment, with interest and costs, in case the judgment should be reversed. *Kiernander* v. *Watson*. 5th March 1787. Sm. R. 66.

31. An appellant in whose favour a decree had been made, but with which he was dissatisfied, was ordered to give security in double the amount of the decree and costs in the Supreme Court, as well as for the costs on the appeal. *Bebb* v. *Morgan*. Chamb. Notes, 28th Jan. 1790. Mor. 53.

32. In all cases the appellant should enter into the securities before moving that the petition of appeal be allowed, and a certificate thereof should form part of the grounds of the motion. *Lolljee Mull* v. *Rajchunder Chowdry*. 25th Nov. 1835. Mor. 61.

33. A mercantile firm will be considered as a good security in appeal cases; and however numerous the partners may be, they will be considered as constituting but one security. *Rajkistno Bonnerjee and others* v. *Tarraney Churn Bonnerjee and others*. 7th March 1839. Mor. 64.

34. As a general rule, when the property exceeds one lac of rupees, the Master should require distinct and independent securities for each lac.[1] *Ib.*

35. The security required from the respondent when the decree is ordered to be executed must be applied for *before* the allowance of the appeal. *Bissumber Seal* v. *Ramdhone Bonnerjee and another*. 1st Dec. 1841. 1 Fulton, 32.

36. When the judgment of the Court has been satisfied by the act of the party out of Court, and not by virtue of any direction of the Court, no order for security for the performance of the decree of the Privy Council can be made. *Ragober Dyal and others* v. *The East-India Company*. 6th Feb. 1843. 1 Fulton, 146.

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4. *Time for Appeal.*

37. It was held to be doubtful whether the six months, the time allowed by the Charter for commencing an appeal, are to be reckoned from the day the judgment is pronounced in open Court, or from that on which it is completed by being entered in the office by the attorney of the successful party. *De Castro and others* v. *Page and others*. Hyde's Notes. 12th July 1783. Sm. R. 62. Mor. 48.

38. An appeal will be allowed on the same day that the petition is filed, in order to save the six months. *Same* v. *Same*. Hyde's Notes. 12th July 1783. *Doe dem. Ramrutton*

Judges; and if these are stated, it is competent for the Court to reform the petition, by directing the statement to be omitted. It is desirable that Judges should exercise the power of reforming petitions of appeal themselves, and not refer them to the Master for impertinence. Minute relating to appeals filed by order of the Supreme Court at Calcutta, 20th Jan. 1836. (Ryan, C. J., Grant and Malkin, Js.) Mor. 62.

[1] The question of the sufficiency or insufficiency of the security was held by the Privy Council to be entirely a question for the Court below. *Cambernon* v. *Egrongnard*. 1 Knapp. 251.

Tagore v. *Holme*. 12th July 1783. *The East-India Company* v. *Balfour*.[1] Hyde's Notes. 21st June 1784. *Dutteram Turrufdar* v. *Watson*.[2] Hyde's Notes. 25th Oct. 1784. Sm. R. 63. Mor. 49.

39. The legal meaning affixed by the Court to the expression "six months" in the Charter, limiting the time of appeal, was, that they were to be "lunar months," and not calendar months. *Calvin and others* v. *Ball*. Chamb. Notes. 6th Mar. 1798. Sm. R. 19. 71. Mor. 56.

40. But this decision was afterwards overruled, and the "six months" allowed for appealing were held to be "calendar" and not "lunar" months. *Reed* v. *Govindchund and others*. June 1823. Cl. R. 1829. 172. 329. Mor. 57. *Woomeschunder Paul Chowdry* v. *Isserchunder Paul Chowdry*.[3] 17th July 1828. Cl. R. 1829. 329. Mor. 58.

41. If the appellant should suffer six months from the date of the order allowing the appeal to elapse without taking further steps, it will not be held sufficient to enable the respondent to get the appeal dismissed for want of prosecution. *Woomeschunder Paul Chowdry* v. *Isserchunder Paul Chowdry and others*. 13th Feb. 1839. Cl. R. 1834. 160. Mor. 59.

42. Semble, A twelvemonth is sufficient. *Ib.*

43. The time is to be reckoned, not from the mere filing of the petition, but from the date of the order allowing the appeal. *Ib.*

44. If a petition of appeal be filed, it will be held good ground for a plea to a bill of review filed subsequently to the petition, and the bill of review must be dismissed. *Janokey Doss and others* v. *Bindabun Doss and others*. 2 Nov. 1835. Mor. 60.

45. The motion to receive, read, and file the petition of appeal is a sufficient preferring of the petition within six months. *Rogober Dyal* v. *East-India Company*. 6th Feb. 1843. 1 Fulton, 146.

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5. *Restoration of Appeal.*

46. Leave was given to restore an appeal dismissed for want of prosecution, the Court below having consolidated it with another appeal in the same cause, which was still pending. *Surroopchunder Sircar Chowdry* v. *Ramrutton Mullick*. 10th Feb. 1837. 1 Moore, 404. 1 Moore Ind. App. 358.

47. Leave was given to restore an appeal which had been dismissed for want of prosecution; the appellant's agent, though instructed to prevent the dismissal of the appeal, not having received the transcript until after the expiration of a year and a day from the time of the allowance of the appeal, and the respondent having in consequence thereof obtained an order of dismissal. *Sree Mutty Bissnosoondery Dabee* v. *Rajah Burrodacaunt Roy*. 12th Feb. 1839. 3 Moore, 11. 2 Moore Ind. App. 127.

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6. *Practice in Appeals.*

48. The certificates of the copies of the proceedings in a cause to be transmitted for an appeal only require the seal of the Court, and not the signa-

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[1] In this case Hyde, J., observed, when it was moved that the appeal should be allowed:—"It is now more than six months since the decree was made in this cause: it will therefore be necessary to transmit with the appeal the order made by me in the vacation, before the six months were expired, that the appeal should be received and filed."

[2] The order in this case was made in vacation, a few days before the six months expired, in order to save the time.

[3] In the former of these two cases the time was held to run from the "signing," and not from the "pronouncing" of a decree, and that the day of signing and its corresponding day six months were both inclusive. In the latter case, however, the Court decided that the time runs from the day of "pronouncing," according to the words of the Charter, and not from the day of signing, and that the day after the pronouncing of the decree is the *first* day to be reckoned.—Mor.

ture of the Judges. *Lyon* v. *Chaund Holdar*. Hyde's Notes. 11th June 1782. Sm. R. 61. Mor. 47.

49. Before a petition of appeal be filed, there must be a certificate of the judgment having been signed in the office. *De Castro* v. *Page and others*. Hyde's Notes. 20th Mar. 1783. Sm. R. 61. Mor. 48.

50. The Court of Appeal will always require some clear distinct ground of error to be pointed out before they will reverse a decision depending upon the credibility of evidence. Where the question is a mere question of *fact*, the Court will adopt the course of adhering to the determination of the Court below in whose presence the whole evidence was given, unless the case be so unsatisfactory as to require further explanation, so improbable as to be manifestly unworthy of credit, or exhibit circumstances which must convince any impartial and judicious mind of its untruth. *Baboo Ulruck Sing* v. *Beny Persaud*. 11th Feb. 1834. 2 Knapp, 265. Mor. 69.

51. Held, that in all cases on the meaning of the words of the Charter, the security for costs should be entered into by the appellant before moving to allow the appeal, and that a certificate thereof should form part of the grounds of the rule *nisi* why the petition of appeal should be allowed. A statement of the Judge's reasons was struck out, but the Court refused to order an affidavit set out nearly *in hæc verba* in the body of the petition to be struck out, though they disapproved of it. *Lolljee Mull* v. *Rajchunder Chowdry*. 25th Nov. 1835. Clarke's Notes, 115.

52. Motion to allow a petition of appeal should be for an order *nisi*, and not upon notice. *Comulmoney Dossee* v. *Sibosoondery Dossee*. 7th Mar. 1839. Barwell's Notes, 14.

53. But it was upon notice in the case of *Joymoney Dossee*. Barwell's Notes, 14.

54. In appeals to England three motions only are requisite, viz. 1st. That the petition of appeal be received, filed, and read. 2d. That recognizances be entered into, or deposit made. 3d. That the petition be allowed. *Sreemutty Ranee Hurrosoondry Dossee* v. *Cowar Kistenauth Ray*. 20th June 1842. 1 Fulton, 10.

55. After an application to the Court for the allowance of a petition of appeal has been wholly refused, if the appeal be persevered in, a fresh petition must be preferred within six months from the date of the order appealed against; but otherwise if the application be only delayed, as for want of security for costs having been given. *Same* v. *Same*. 10th April 1843. 1 Fulton, 205.

56. Semble, After a petition of appeal has been filed, the rule for execution should be *nisi* in the first instance. *Remfry* v. *Cowie*. 6th Mar. 1844. 1 Fulton, 446.

57. Pending an appeal, the Court has a discretionary power to allow execution to issue, or otherwise. *Ib.*

58. The circumstance of an appeal being *bonâ fide* is not sufficient to induce the Court to stay proceedings. *Ib.*

58 *a*. The Court will not allow an appellant to deposit Company's paper in lieu of giving the respondent his execution, upon the suggestion that the sureties may leave the jurisdiction, the Charter conferring no such power. *Ib.*

III. From the Courts of the Honourable Company.

1. *When allowed.*

59. In an appeal to the Sudder Dewanny Adawlut against the decision of a Provincial Court, under Sec. 8 of Reg. III. of 1801; it appearing that the Zillah Judge had dismissed, on default of prosecution by the appellant, an appeal from a decision of the Zillah Register, and

that the Provincial Court, after hearing both parties for and against that dismissal, had approved and confirmed it, the Court of Sudder Dewanny Adawlut did not consider a further appeal within the intent of the Section and Regulation quoted.[1] *Ram Pursaud Lusker and another* v. *Ram Soonder Ghose.* 30th Jan. 1809. S. D. A. Rep. Vol. I. 269.—Harington & Fombelle.

60. By Sec. 8. of Reg. V. of 1793,[2] an appeal from a decision on the award of arbitrators may be admitted, without, in the first instance, requiring proof of their corruption or partiality. *Debeepurshad Sein* v. *Indurjeet Sein and others.* 19th May 1809. 1 S. D. A. Rep. 288. —Harington & Stuart.

61. A judgment in a suit, brought on the behalf of the appellants by one not duly authorised on their part, was held not to bar the appellant's right of action. *Rajah Kasheenath Rai and others* v. *Nuwab Dilawur Jung.* 12th May 1812. 2 S. D. A. Rep. 14.—Harington & Fombelle.

62. It was held, that an appeal from a nonsuit, on the ground of former judgments, the merits of the cause not having been investigated, should, under the spirit of Sec. 8. of Reg. II. of 1801[3], be admitted as summary. No institution fee was therefore required from the appellants. *Ib.*

63. Where a decree had been given against the appellant in the Zillah Court, by a summary decision, passed under the provisions of Reg. XLIX. of 1793[4]; and the appellant petitioned the Provincial Court to admit an appeal from that decision, on the ground that the Regulation above mentioned was not relevant to his case, and such petition had been rejected by the Provincial Court; it was held by the Sudder Dewanny Adawlut, that as the appellant's petition of appeal to the Provincial Court contained an express claim to appeal on the ground of the irrelevancy of the Regulation, it was clearly their duty to admit an appeal, and investigate that point under the provisions of Sec. 7. of Reg. V. of 1798; and the Court accordingly passed an order, directing the Provincial Court to receive the appeal, and proceed to investigate the appellant's objections. *Lukhun Manik Rai* v. *Mt. Rooknee.* 10th Sept. 1812. 2 S. D. A. Rep. 39. —Fombelle & Stuart.

64. It was held, that, according to the provisions of Sec. 2. of Reg. XXVI. of 1814[5], a special appeal cannot be granted from a decree, on the ground of its awarding to an auction purchaser possession of certain lands, which lands, not being specified among the auction papers and in the plaint under the designation given to them in the decree, were apparently different from those claimed; but it was held, that this was sufficient ground for recommending a review of judgment; and the appellants were directed by the Court to present a petition for a review in the mode prescribed by Cl. 2. of Sec. 4. of Reg. XXVI. of 1814. *Shaum Beebee and others* v. *Sonaoolla.* 4th April 1816. 2 S. D. A. Rep. 176. —Ker.

65. The appellants were adjudged by the Provincial Court to pay a debt borrowed by their brother, on the ground of the family having been undivided, and of the money having

[1] This case is reported as relating to a construction, not generally understood, of Sec. 8. of Reg. II. of 1801, which is equally applicable to Sec. 9. of that Reg., providing for an appeal to the Provincial Courts in cases of dismissal on default by the Zillah and City Courts. These Sections have, indeed, been rescinded by the first clause of Sec. 3. of Reg. XXVI. of 1814; but similar provisions are still in force under the second and third clauses of the Section last mentioned.

[2] Sec. 8. of Reg. V. of 1793 was rescinded by Sec. 5. of Reg. II. of 1798.

[3] See note 1, *supra*

[4] Rescinded by Act IV. of 1840.

[5] Revived by Cl. 2. of Sec. 4. of Reg. II. of 1825. Cl. 7. of Sec. 2. of Reg. XXVI. of 1814 has been rescinded by Act I. of 1846.

been applied for the benefit of the family generally; but the decree allowed them, at the same time, to sue for the recovery of the sum so adjudged from the estate of their brother. A special appeal was admitted against this part of the decree as inconsistent, and so much of the decree as gave this option was annulled by the Sudder Dewanny Adawlut. *Nub Koomar Chowdry and another* v. *Jye Deo Nundee.* 14th Aug. 1817. 2 S. D. A. Rep. 247.—Ker & Oswald.

66. Where the Provincial Court had nonsuited the appellants for having sued only for a part of their claim, the Sudder Dewanny Adawlut allowed a summary appeal from that decision, and directed the Provincial Court to re-admit the suit, and allow the appellants to pay the institution fee on the remainder of their claim, and to amend their plaint in conformity with Sec. 4. of Reg. IV. of 1793. *Neel Kaunt Ghose and another* v. *Sassee Munee Dassee.* 9th April 1819. 2 S. D. A. Rep. 293. —Fendall & Goad.

67. An order by a Zillah Judge for the execution of a private award by arbitrators is not appealable. *Ram Surrun* v. *Saboodha Misser.* 8th Jan. 1820. 3 S. D. A. Rep. 4.—Rees & Goad.

68. The Sudder Dewanny Adawlut passed an order admitting an appeal, and directing the prosecution of a suit which had been compromised in the Provincial Court ten years previously, on its being proved that the parties who compromised the suit were incompetent to do so. *Kamla Kaunt Chukerbutty* v. *Gooroo Govind Chowdree.* 22d Aug. 1822. 4 S. D. A. Rep. 322.—C. Smith & Dorin.

69. Where judgment is given against two persons jointly, one of them is not competent to appeal severally for the reversal of half the decree; nor can half a judgment be appealed from when given against one individual *Roshun Khatoon* v. *Jan Khatoon.* 10th Nov. 1824. 3 S. D. A. Rep. 414.—Smith.

70. A special appeal was admitted, on the ground of deficient investigation which appeared from the decision of the Lower Courts. *Kurta Das Mahunt* v. *Lekhraj and others.* 16th March 1825. 5 S. D. A. Rep. 266.—C. Smith & Ahmuty.

71. A special appeal was held to be admissible on review, on the ground of the conflict of two orders of the Sudder Dewanny Adawlut; viz. a prior order disallowing a special appeal, and judgment on a regular appeal, from the decree of a Provincial Court in another suit, in which the same fact was at issue. *Kali Parshad Ray* v. *Heirs of Khela Ram Mukhopadhya.* 30th April 1827. 5 S. D. A. Rep. 207.—Leycester & Ross.

72. A special appeal was admitted, because the order of the Zillah Judge, imposing a fine of Rs. 100 on the appellant for the temerity of his defence, was unjust, and contrary to judicial practice. *Ray Radha Govind Singh* v. *Goracnandra Gosain.* 12th July 1830. 5 S. D. A. Rep. 200.—Turnbull & Rattray.

73. The Sudder Dewanny Adawlut admitted a special appeal, perceiving reason to doubt the accurate finding of a fact operating a legal forfeiture. At the same time the Court ruled, that this case should not be received as a precedent, authorising any departure from the rules for the admission of special appeals, of which observance is directed by Cl. 2. of Sec. 4. of Reg. II. of 1825. *Sri Nath Mullik* v. *Abhai Charan Nandi.* 20th Dec. 1830. 5 S. D. A. Rep. 79.—C. Smith & Ross.

74. Where a course of procedure required by the Courts to be observed in cases in which the plaintiff asserts that the rule of limitation under Sec. 14. of Reg. III. of 1795[1] was within the exception established by Reg.

[1] Rescinded by Sec 2 of Reg IX of 1810

II. of 1805, that fraud is a bar to limitation, had not been observed; the Court admitted a special appeal, judging that, on that account, the case merited further deliberation and consideration. *Pran Krishn Neogi and another* v. *Sadr-ud-din Chaudhari.* 19th July 1831. 5 S. D. A. Rep. 323.—Sealy & Ross.

75. Two Judges of the Sudder Dewanny Adawlut admitted a special appeal, because the Lower Courts had decided the case, in which a question of Hindú law was involved, without reference to the Law Officer, such a course being contrary to the Regulations and practice. *Kripa Sindhu Patjoshi and others* v. *Kanhaya Acharya.* 9th Feb. 1832. 5 S. D. A. Rep. 335. — Rattray & Sealy.

76. In an action to recover on a conditional sale, the plaintiff succeeded in the Lower Courts, on the ground that the sale had become absolute by default of the vendor to repay all within the legal time, the vendee having received rent from the sold property, and having continued to receive partial payments after default, and the vendor having deposited in Court a sum as balance due to the vendee. A special appeal was admitted, because the Lower Courts had not inquired into the state of account between the parties after bringing to the credit of the defendant the sums received by the plaintiff, nor as to the disputed service of notice under Sec. 8. of Reg. XVII. of 1806 on the vendor. *Parasnath Chaudhuri* v. *Lala Bihari Lal.* 8th March 1832. 5 S. D. A. Rep. 346. —Ross & Rattray.

77. A special appeal was admitted from a doubt whether, in a case in which an Ameen not having been sworn previous to deputation under Sec. 17. of Reg. IV. of 1793, the defect was cured by his being subsequently sworn to his report. *Shah Nawaz Khan* v. *Clement.* 10th Jan. 1833. 5 S. D. A. Rep. 261.—Turnbull & Leycester.

78. A judgment creditor, who had intervened, in a case in which his debtor was defendant, to assert the latter's right, and the liability of the contested property to satisfy his claim, was allowed to appeal from the judgments of the lower Courts, which diminished the solvency of his debtor. *Imdad Ali* v. *Kadir Buksh and others.* 24th April 1833. 5 S. D. A. Rep. 296.—Leycester & Ross.

79. Where judgment creditors had intervened in an action for foreclosure of a mortgage, in which their debtor was defendant, their interest was held to entitle them to appeal from a judgment which tended to bar their right of execution against the real property of their debtor. *Ram Ruttun Roy and others* v. *Sumboochunder Roy and others.* 20th May 1841. 7 S. D. A. Rep. 32.—Lee Warner & Reid.

80. Pending an appeal to the Sudder Dewanny Adawlut, in a case in which the claim was founded on peculiar family usage, the claimant died, and a party stating himself to have the next best title to the property applied for permission to carry on the appeal; the application was refused, and the applicant referred to a separate action, as no decree could be passed in his favour on the plaint of the party who originally claimed under the special usage. *Loll Munnee Koonwaree and others* v. *Rajah Nemyenerain and another.* 16th April 1839. 6 S. D. A. Rep. 255.—Tucker & Rattray.

81. The plaintiff having failed to appear in the Court of original jurisdiction, and having shewn no reason for the default, the Court will not entertain his appeal, or enter into his objections to the claim. *Mofeezoodeen* v. *Ram Ruttun Roy.* 6th June 1840. 6 S. D. A. Rep. 288.—D. C. Smyth.

82. Held, upon a petition for leave to appeal from an interlocutory order to the Queen in Council, that no appeal could be allowed, except from a "decree, judgment, or decretal order," having the effect of a definitive judgment in a regular case. *Sayyad*

Mahummad Ali Khan v. *Nagar-Ara Begum and others.* 29th June 1840. 1 Sev. Sum. Cases, 113.—Reid, Rattray & Tucker.

83. A party having acknowledged the justice of a decree given against him, by asking time to satisfy it, was not allowed to impeach it in appeal, preferred subsequently to such acknowledgment. *Lalloo Ram Dullal* v. *Sheik Mahomed Ismail.* 7th Sept. 1841. 7 S. D. A. Rep. 44.—Tucker & Reid.

84. The Court rejected an application for the admission of a special appeal, where the grounds on which it was preferred were found, on a perusal of the papers of the case by the Court, not to be borne out by the facts and allegations as set forth by the petitioners themselves. *Mahabul Singh and others, Petitioners.* 8th March 1842. 1 Sev. Sum. Cases, 157. —Tucker & Reid.

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2. *Security.*

85. Held, that there is no regulation in force providing summarily for any remedy against losses sustained in appeal cases from the insufficiency of security, pronounced by the *Názir* of a Civil Court to be good and sufficient for the performance of final judgment. But in cases of alleged injuries to parties from neglect of duty, or other misconduct, wilful misrepresentation or the like on the part of the *Názir*, the injured party can only have his remedy by the institution of a regular suit under the provision of Reg. IV. of 1793. *Lal Mohun Bose, Applicant.* 2d July 1839. 1 Sev. Sum. Cases, 53.—Reid.

86. Under the provisions of Sec. 11. of Reg. XIII. of 1808 [1], the Court directed a greater amount of security, equal to one year's produce of the adjudged property, to be entered into by the respondent during an appeal to the King in Council, than that which the Zillah Court had accepted as good and sufficient to answer the condemnation. *Shumsoon-Nissa Khanum* v. *Rayjan Khanum.* 15th Aug. 1839. 1 Sev. Sum. Cases, 107.—Braddon, Tucker, & Reid. (D. C. Smyth, *dissent.*)

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3. *Time for Appeal.*

87. The three calendar months prescribed by Sec. 12. of Reg. V. of 1793 [2], as the time within which appeals must be instituted from the Zillah to the Provincial Courts, ought to be calculated according to the English, and not the Bengal Calendar. But where the appellants had preferred their appeal within three Bengal months, and pleaded ignorance of the English Calendar, the Court admitted the appeal. *Anon.* 26th Sept. 1797.—Harington's Anal. 2d Edit. 120, note.

88. In an action brought for possession of an estate mortgaged under a deed of *Bay-bil-wafá*, or conditional sale, the period for its redemption having expired, a decree was obtained in the Zillah Court by the mortgagee. Two years afterwards (the estate having in the mean time been sold by public auction) an appeal being preferred to the Provincial Court, the Zillah decree, from its not being in conformity with the rules of Reg. XVII. of 1806, was reversed. The Sudder Dewanny Adawlut, however, held the sale to have become absolute, considering the omission by the mortgagor to prefer an appeal in due time, and to stay the intermediate sale of the estate, as a sufficient bar to his right of redemption. *Puddumchurn Mohapater* v. *Ramlall Pandey.* 19th Nov. 1816. 2 S. D. A. Rep. 200. —Ker & Oswald.

89. On the 30th December 1820, a Judge of the Sudder Dewanny Adawlut struck an appeal off the file, on the compromise of the guardian of

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[1] This Regulation was rescinded by Sec. 2. of Reg 1 of 1814

[2] In part rescinded by Sec. 9. of Reg. II of 1798.

an infant appellant with the respondent. On the application of the appellant at the end of eleven years (three after the age of sixteen attained) review was admitted by a single Judge, and the appeal revived, on the ground that there was no apparent benefit arising from the withdrawal of the appeal. *Rajendra Narayen Adhikari and another* v. *Sayud Abdul Hakim.* 7th Jan. 1832. 5 S. D. A. Rep. 307. —Ross.

90. Where a special appeal from a judgment affecting government was admitted after a lapse of five months and thirteen days from its date, the appellant justified the delay by the necessity of reference to, and sanction of, the superior functionaries of government. *Collector of Zillah Chittagong* v. *Krishn Kishwar.* 2d Feb. 1832. 5 S. D. A. Rep. 331.—Rattray.

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4. *Who may defend.*

91. A mortgage having been declared valid by the former judgment of a Zillah Court, from which no appeal was preferred, was found to be illegal on the trial of a subsequent suit for redemption of the mortgaged property, but was not set aside on this account by the Sudder Dewanny Adawlut, the former judgment being still in force, and voidable only on review or appeal. Three respondents, each claiming a right of succession to the mortgaged property, were permitted to defend the appeal, and referred to a regular original suit for the adjustment of their respective claims. *Juggut Chunder Sein and another* v. *Kishwanund and others.* 12th Sept. 1814. 2 S. D. A. Rep. 126.—Harington & Fombelle.

92. Pending an appeal from a decision obtained in the Provincial Court by *A* and *B* as attornies of *C*, *C* died; but the Court allowed *A* and *B* to defend the appeal under a general power of attorney executed by the son and next heir of the deceased. *Ooduy Chund Chatoorjea* v. *Palmer and Co.* 14th Feb. 1820. 3 S. D. A. Rep. 14.—Fendall & Goad.

93. *A*, having failed in his action against *B*, appealed; the judgment creditors of *B*, interested in his solvency, were allowed to defend the appeal. *Aiman Bibi* v. *Ibrahim Khan.* 9th May 1833. 5 S. D. A. Rep. 304.—Barwell & Walpole.

94. On the death of a respondent, his judgment creditors, with reference to the interest they had in the property of their debtor for liquidation of the debt due to them, were permitted to defend the appeal. *Roopnerain Singh and another* v. *Buxshee Bhugwunt Singh and others.* 4th April 1842. 7 S. D. A. Rep. 86.—Tucker, Reid, & Barlow.

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5. *Appeal by a Pauper.*

95. Held, that a special appeal preferred by a pauper, in a suit instituted subsequently to the 1st of February 1815, could not be entertained. *Jai Ram Dhami and others* v. *Musan Dhami.* 14th Jan. 1822. 5 S. D. A. Rep. 3.—Shakespear. *Munsa Ram* v. *Jowahir Pande and others.*[1] 16th Sept. 1822. 3 S. D. A. Rep. 172.—C. Smith.

96. Where the Provincial Court had refused to admit an appeal *in formâ pauperis*, on the merits of the

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[1] Sec. 5. of Reg. II. of 1825, however, is in the following terms:—"Regulation XXVIII. of 1814 relative to paupers, not containing any specific provision respecting pauper appellants or respondents, in second or special appeals *in formâ pauperis* from decisions passed in original suits, shall, *after the promulgation of the present Regulation*, be consitered applicable to any second or special appeals which may be preferred *in formâ pauperis*, and which may hereafter be deemed admissible under the rules specified in the preceding Section." This rule, though it alters the law, furnishes a proof of the accuracy of the construction given in the above report.—Macn.

[2] By Cl. 3 of Sec. 12. of Reg. XXVIII. of 1814 it is provided—"If, upon a perusal of the petition and copy of the decree (in the case of an appeal by a pauper) the original judgment shall not appear to the Court to be erroneous or unjust, or if the nature of

case, and without reference to the question of pauperism; it was held, that such order was final, and not open to a special appeal.[2] *Synud Kulunder Ali* v. *Dhoomun Beebee.* 16th Jan. 1826. 4 S. D. A. Rep. 105.—Smith.

98. *A*'s special appeal *in formâ pauperis*, contrary to a particular rule (Sec. 17. of Reg. XXVIII. of 1814) admitted by two Judges of the Sudder Dewanny Adawlut (Leycester and Goad), was quashed on the proposition of one of the two Judges (Dorin), before whom it came on for trial, and adopted by a second Judge (J. Shakespear). *A*'s subsequent application to be admitted to appeal in the usual mode was overruled (Shakespear, Dorin, and Leycester), but not on the merits. Held, that on the enactment of Reg. IX. of 1828 his appeal *in formâ pauperis* is admissible on renewed oath to poverty, such rejection notwithstanding. *Malik Ya'kúb and others* v. *Jag Jewan Dhar and others.* 3d April 1832. 5 S. D. A. Rep. 179.—H. Shakespear.

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6. *Dismissal of Appeal.*

99. It was held, that where notice has not been served on an appellant, as required by Sec. 12. of Reg. V. of 1793[1], delay on the part of the appellant in filing his pleas of appeal is not a sufficient ground for dismissing his suit. *Oodwunt Rawut* v. *Auluk Rai.* 23d Sept. 1812. 2 S. D. A. Rep. 40.—Fombelle & Stuart.

100. Before the dismissal of an appeal, it is required (as laid down in Sec. 12. of Reg. V. of 1793) that the appellant should be summoned, and required to shew cause why the suit had not been proceeded on during the prescribed period. *Shewuk Pal* v. *Juggoobundua.* 23d Sept. 1812. 2 S. D. A. Rep. 41.—Fombelle & Stuart.

101. On appeal to the Sudder Court, a suit was dismissed on account of the irregularity of the plaint, and, consequently, of the whole record. The respondent had sued for only *produce*, and had obtained judgment for *land.* As the *land* was in dispute, the party in possession should have been sued by the other; and from the pleadings and evidence it appeared to the Court that the appellant was in possession. *Amma Teroomoomboo* v. *Coonyoor Chinden.* Case 6 of 1819. 1 Mad. Dec. 230.—Harris & Cherry.

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7. *Restoration of Appeal.*

102. Where an appeal had been dismissed for want of prosecution, no step having been taken in it for ten years, the appeal was, upon petition to the King in Council, restored, the appellant paying the costs of dismissal and restoration; it appearing that the appellant was ignorant of the proceedings necessary to be taken in this country, and had, though after a lapse of some years, instructed a commercial house in Calcutta to prosecute the appeal, but whose agent in England becoming insolvent, no proceedings were taken to bring the case to a hearing. *Rajah Deedar Hossein* v. *Ranee Zuhooroonisa.* 24th Feb. 1841. 2 Moore Ind. App. 441.

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8. *Practice in Appeals.*

103. The Court, in special appeals, do not consider themselves bound to

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the cause shall not appear to be of sufficient importance to merit a further investigation in appeal, the Court will reject the petition, and will refuse to admit the petitioner to sue in appeal as a pauper." This rule has been construed by the Sudder Dewanny Adawlut, on many occasions, as vesting the appellate authority with discretion to pass a final order not open to special appeal. It would have been otherwise had the appellate authority rejected the petitioner's appeal, on the ground that he was not a pauper, in which case a special appeal might have been admitted for the purpose of trying that point.—Macn.

[1] Part of this Section was rescinded by Sec 9. of Reg II. of 1798

decide more than the point on which the appeal is admitted. *Kalachund Chukurbuttee* v. *Joogul Chukurbuttee.* 2d June 1809. 1 S. D. A. Rep. 279.—Harington & Stuart.

104. Where the Provincial Court had rejected a petition of appeal on the ground of the period allowed for appealing having elapsed, without looking into the pleas explanatory of the delay, the Sudder Dewanny Adawlut, on a summary appeal, ordered that Court to inquire into the truth of the statement of the appellants previously to rejecting the appeal. *Mt. Nund Koor Beebee* v. *Bheer Kishore Mhytee.* 7th May 1819. 2 S. D. A. Rep. 299.—Rees & Goad.

105. Where the Provincial Court had dismissed, on default, an appeal, because the appellants had neglected to file a reply to the respondent's answer; it was held by the Sudder Dewanny Adawlut, that the reply was unnecessary according to the spirit of Sec. 9. of Reg. XXVI. of 1814, although the appeal was admitted before the date fixed for the operation of that Section; and the Court ordered the Provincial Court to readmit the appeal, and try it on its merits. *Ajeet Sing and others* v. *Hurlal Sing and others.* 16th July 1819. 2 S. D. A. Rep. 306.—Rees & Goad.

106. The respondents having procured the attachment of certain property in dispute as being that of their deceased relative *A*, the appellant instituted a suit to remove the attachment, on the ground of the property belonging to her late husband, and not to *A*. This suit was decided against her, and she acquiesced in the decision. The question then was, whether the appellants or respondents were entitled to the property; and it was decreed that it should be divided amongst them in certain proportions. It was against this decision that the appeal was brought, being for "the recovery of the property of her late husband;" and the appeal was thrown out, because the appellant had preferred it against this decision instead of the first, nonsuiting herself in a direct claim for her own husband's property from the respondents. *Mt. Umroot* v. *Kulyandas and others.* 5th July 1820. 1 Borr. 284.—Hon. M. Elphinstone, Colville, Bell, & Prendergast.

107. A party appealing to the Sudder Court was allowed to file additional papers to those already exhibited by him in the Lower Court, in consideration of his having been interrupted by his duties in the regular prosecution of his suit, he being a *Havildár* in the service of the East-India Company. *Buheerojee Bhilare* v. *Salajee Bhilare.* 27th April 1822. 2 Borr. 222.—Babington.

108. The examination of the provisions of a Zillah decree, not regularly appealed against, recommended by the sitting Judge (Romer), was disallowed. *Sookhlal Ruttunchund* v. *Mt. Ruheema Buhoo.* 24th July 1823. 2 Borr. 632.—Sutherland & Ironside.

109. The appeal of one party brings the merits of the judgments of the Lower before the Superior Court, which is competent to amend an error of which the respondent, in his answer, complains; and any separate and formal appeal on his part is not necessary for this purpose. *Radha Maní Devya* v. *Surya Maní Devya and another.* 31st May 1831. 5 S. D. A. Rep. 120.—Ross & Rattray.

110. Where there were several defendants to a suit, which was dismissed by the Lower Court, the Court, in appeal, admitted the plaintiff, appellant, to discharge those not considered by him liable, and to prosecute the appeal against the principal defendant only. *Karta Das Mahunt* v. *Lekhraj and others.* 5th Feb. 1833. 5 S. D. A. Rep. 266. — H. Shakespear & Rattray.

111. Where the original notice of appeal had been mislaid, the Court directed renewal, and the respondent

was allowed to appear and defend after proceedings had in the appeal *ex-parte*. *Ib.*

112. One Judge decided finally a special appeal admitted by another, though he did not adopt the legal ground on which the appeal was admitted. *Collector of Zillah Chittagong* v. *Krishn Kishwar*. 30th Sept. 1833. 5 S. D. A. Rep. 331. — Braddon.

113. Two suits having been brought for sums due on the same account, each of which was under Rs. 50,000, or £5000; it was held, that such suits could not be consolidated for the purpose of appeal, though the original severance of them was contrary to the plaintiff's instructions, and the aggregate amount of both exceeded £5000.[1] *Moofti Mohummud Ubdoollah* v. *Baboo Mootechund*. 10th Feb. 1837. 1 Moore Ind. App. 363.

114. Held, that in a suit laid at a sum exceeding Rs. 5000, but in which the principal Sudder Ameen gives a decree for a sum less than that amount, the appeal, under Sec. 4. of Act. XXV. of 1837, lies to the Sudder Dewanny Adawlut, and is not cognizable by the Zillah Judge. *Rajah Nowul Kishore Singh* v. *Achumbut Ray and others*. 31st March 1842. 7 S. D. A. Rep. 80.—Tucker & Reid.

APPEARANCE.

See Practice, 121 *et seq.*

ARBITRATION.

I. In the Supreme Courts.

II. In the Courts of the Honourable Company.

1. *Award*, 4.
2. *Setting aside awards*, 10.
3. *Practice in Awards*, 17.
4. *Appeal from Award.* — *See* Appeal, 60.
5. *Costs.*—*See* Costs, 52.
6. *Interest on Awards.* — *See* Interest, 49, 50.

I. In the Supreme Courts.

1. Where an interlocutory judgment has been entered up at the trial *pro formâ* for the damages laid in the plaint, subject to the award of an arbitrator; and after such award made for a less sum, the plaintiff obtained a rule to shew cause why the judgment should not be entered up for the sum awarded, with costs; this is sufficient after the expiration of that rule, and judgment entered accordingly, (the defendants having shown no cause, except as to the costs,) to enter final judgment on the roll, and sue out execution, without first giving the common four-day rule for judgment, which the defendant had had the benefit of before the judgment was signed. *Hemming* v. *Kidd and another*. 4th Nov. 1817. East's Notes, Case 68.

2. A bill was dismissed, the complainant having incurred a *penalty* (as stated), *i.e.* his advance on a contract of purchase of goods for not having completed his purchase in time. After further time, and much negociation, the complainant left it to the decision of the Governor-General, who decided against him. Held, that he was bound, especially after an acquiescence of several years. *Ramrutton Mullick* v. *The East-India Company*. 27th April 1820. East's Notes, Case 118.

3. A plea that the submission to arbitration has been made a rule of Court, and that the bill to set aside the award had not been filed until after the last day of the next term after publication of the award, was held good, although the bill sought to set aside the award on the ground of fraud. *Thompson* v. *Clark*. 4th Term 1832. Cl. R. 1834. 60.

[1] This decision was given according to the provisions of the 21st Geo. III. c. 70.

II. In the Courts of the Honourable Company.

1. *Award.*

4. In a suit for possession of the endowed lands of a *Mohantí*, the plaintiff (between whom and the defendant there had been disputes about the right of succession to the late *Mohant*) was determined by a *Pancháyit*, or assembly of *Mohants*, convened by order of the Sudder Dewanny Adawlut, to be the rightful successor, and possession was adjudged to him accordingly. *Surubanund Purbut* v. *Deo Sing Purbut.* 31st Jan. 1810. 1 S. D. A. Rep. 296.

5. A dispute between two Pársís, respecting their right to certain shares of a house, was referred to arbitration by the Zillah Judge (Bourchier), who decided according to the award, as there was no charge of corruption alleged to bar its confirmation. On appeal to the Provincial Court (Grant and Smith), and to the Sudder Adawlut, it was held, that, under Sec. 20 of Reg. VII. of 1800[1], the appeal must be dismissed with costs, and the award was confirmed merely as an award, without inquiring into the merits of the decision. *Furidoonjee Shapoorjee* v. *Jumshedjee Nowshirwanjee.* 7th April 1811. 1 Borr. 23.—Duncan, Lechmere, & Rickards.

6. Where a Hindú woman, who had become a convert to the Muhammadan faith, sued her husband to recover property which devolved on her at the death of her parents, and a *Pancháyit* had decided that she (previous to her apostacy) had forfeited all claim to the property in question by her profligate conduct, such award was upheld, and her claim dismissed. *Mt. Rubbee Koor* v. *Jewut Ram.* 1st April 1818. 2 S D. A. Rep. 257.— Ker & Oswald.

7. An award of a *Pancháyit*, under the orders of the assistant Collector, not having been observed, the appellant sued to have it enforced; but as the testimony of his witnesses was unsatisfactory, and neither the award nor the Collector's order were forthcoming, his claim was dismissed.[2] *Pulla Soury* v. *Abrama Thaven and others.* Case 8 of 1823. 1 Mad. Dec. 412.—Ogilvie & Gowan.

8. Where arbitrators had made an extra-judicial award of partition amongst brothers, one of the brothers receded from it, and the others in suing claimed their full legal right according to their allegation as to facts. The defendants did not claim the benefit of the award; but the Court adopted the partition proposed by the arbitrators as equitable, and disregarded the rest of the award. *Kripa Sandhu Patjoshi and others* v. *Kanhaya Acharya and others.* 31st Dec. 1833. 5 S. D. A. Rep. 335.—Braddon & Halhed.

9. *A*, by receding from an award made by arbitrators on his contest with *B*, to which both at first consented, compelled *B* to sue for his legal claim. *A* defended, and *B* was nonsuited, for some informality, by the lower Court, and instead of appealing sued *de novo*. The second suit was tried on special appeal by the Sudder Dewanny Adawlut, which decreed the right of *B* to be according to the award as to part, and more than the award as to part. *Ib.*

2. *Setting aside Awards.*

10. In a suit to recover a piece of land, alleged to have been usurped by the defendants as part of their village, it was agreed between the parties that one of the defendants should walk the boundary of the village, and a person was deputed as Ameen to witness the performance of the solemn act. The boundary was accordingly

[1] Rescinded by Sec. 1. of Reg I. of 1827

[2] It seems that if the order of the Collector had been produced, the Court might have been inclined to believe in the existence of the award

walked in the presence of the Ameen and other persons, and all the ceremonies usual on such occasions were performed. Held, that the parties, having agreed to this mode of settling their dispute, were bound to abide the result. *Anon.* Case 4 of 1814. 1 Mad. Dec. 84.—Scott, Greenway & Stratton.

11. It was held, that an order by a Zillah Judge for the execution of a private award by arbitrators, is not appealable; but if the parties against whom the arbitrators gave their award are dissatisfied with the decision, they are at liberty to institute a fresh action, with a view to get it set aside, agreeably to the general rules contained in Reg. IV. of 1793, extended to Benares by Reg. VIII. of 1795.[1] *Ram Surrun* v. *Sabooddha Misser.* 8th Jan. 1820. 3 S. D. A. Rep. 4.—Rees & Goad.

12. In a claim for recovery, under an award of private arbitration, of certain shares of the property of the respondents' great uncle from his widow and sister-in-law, and which was resisted after the widow's death by her sister-in-law, on plea of a will by the widow in favour of her son, and of the invalidity of the award; it was held, that the will was void, as the award, being consistent with the law of inheritance, was, as the latest transaction, more valid than former ones; and the award was therefore supported by the decree of the Court. *Mt. Umroot* v. *Kulyandas and others.* 5th July. 1820. 1 Borr. 284.—Hon. M. Elphinstone, Colville, Bell, & Prendergast.

13. Where, in a dispute between the first and second wives of a Hindú, deceased (the first claiming from the second, who was childless, the property of their late husband), it was proved that the dispute had been settled by an award of arbitration, and that the first wife had passed a *Fárikhkhatt* for her share; the Court held, that the *Fárikhkhatt* was binding against her, and the award valid, and dismissed her claim with all costs. *Mt. Nhanee Buhin* v. *Mt. Umroot Buhoo.* 23d Jan. 1823. 2 Borr. 59.—Elphinstone & Sutherland.

14. *A* claiming to set aside an award of arbitration, after a silence of ten years, was nonsuited, as he ought to have instituted a suit under Reg. XLIX. of 1793[2], immediately on being dispossessed. *Muzuffer Ali Khan* v. *Fakeer Chand and others.* 22d Mar. 1825. 4 S. D. A. Rep. 46.—Smith.

15. An objection having been raised to an award of arbitration, to the effect that one of the two arbitrators appointed had not accompanied the other to the disputed lands for the purpose of local investigation; it was held, that such an objection was not sufficient to invalidate an award of arbitration, which can only be set aside on proof of bribery and corruption. *Gouree Kaunt Bhuttacharje and another* v. *Kaleepershaud Chowdree and another.* 5th Feb. 1836. 6 S. D. A. Rep. 51.—Stockwell & Master.

16. The award of a *Panchayit*, under a mutual and voluntary deed of reference, cannot be set aside, according to the provisions of Reg. VII. of 1827. *Geereappa Dessaee* v. *Bishtapa Poojaree.* 12th Oct. 1839. Sel. Rep. 223.—Giberne, Pyne & Greenhill.

3. *Practice in awards.*

17. By Sec. 28. of Reg. V. of

[1] Private awards made by arbitrators under Cl. 2. of Sec. 3. of Reg. VII. of 1813, are to be received and enforced according to the rules applicable to summary process: such summary process is subsidiary to a regular suit, and cannot be set aside except on proof of corruption, or partiality on the part of the arbitrators. So also if the parties had consented that the award should include a complete and final adjustment of their respective claims of right; such award, although having the full force of a regular decree, is not subject to a regular appeal, and cannot be set aside or questioned, except in the manner and on the grounds above stated. See the Circular Orders, Sudder Dewanny Adawlut, 24th Feb. 1816.

[2] Rescinded by Act IV. of 1840.

1793, an appeal from a decision founded on the award of arbitrators may be admitted, without in the first instance requiring proof of their corruption or partiality.[1] *Debeepurshad Sein* v. *Indurjeet Sein and others.* 19th May 1809. 1 S. D. A. Rep. 288.—Harington & Stuart.

18. A Kází and a Sudder Ameen are not *public officers*, whom a Zillah Judge, under Sec. 4. of Reg. XVI. of 1793, is to permit to perform the office of arbitrator.[2] *Shah Nawaz Khan* v. *Clement.* 10th Jan. 1833. 5 S. D. A. Rep. 261.—By a full Court.

ARMENIAN.

I. Inheritance. — See Inheritance, 333.

II. Jurisdiction of the Supreme Courts over Armenians.—See Jurisdiction, 81, 111, 198.

III. What Law administered to Armenians—See Practice, 20, 21.

ARMY.

I. In the Supreme Courts.
1. *Courts-Martial*, 1.
2. *Sutler*, 12.

II. In the Courts of the Honourable Company, 14.

[1] It may not be considered of material consequence whether the allegation of corruption or partiality against arbitrators be tried before or after the admission of an appeal from the judgment founded on the award. But it is consonant to general practice, that objections against the grounds of a judicial decision should be tried after admitting an appeal, and it also secures the attendance of the respondent, on notice to him for that purpose previous to the investigation of such objections.

[2] This Section, as here applied, has been rescinded by Sec. 2. of Reg. XXVII. of 1814, and see C. O. S. D. A. No. 67. Vol. II.

I. In the Supreme Courts.

1. *Courts-Martial.*

1. By the 3d and 4th Vict. c. 37. s. 9. the Commanders-in-Chief of the several Presidencies have statutory power to institute Courts-Martial to try offences, whether the army be employed in the territories of the Honourable Company or elsewhere. A person, therefore, who belonged to the army of the Bombay Presidency, and was tried by a Court-Martial in Scinde, under the authority of a warrant from the Commander-in-Chief of the Bombay army, and was sentenced to transportation, which sentence was confirmed by the Governor of Scinde, and not the Commander-in-Chief of the Bombay army, was ordered to be discharged from custody. In the matter of *Mark Porrett.*[1] 13th Mar. 1844. Perry's Notes. Case 13.

2. The Supreme Court has no power to interfere with the sentences of military Courts-Martial legally instituted, and awarding punishments for military offences. *Ib.*

3. Nor can any informality in the proceedings of Courts-Martial be objected to, or listened to, in the Supreme Court. *Ib.*

4. The authority to try the soldiers, of a portion of a Presidency army, put under the command of an officer, not a Commander-in-Chief, and sent on service *extra fines* of any of the Presidencies, can only emanate from one of the three Commanders-in-Chief. *Ib.*

5. And as such portion of an army is not within the local jurisdiction of any Presidency, the authority of no other Commander-in-Chief but the one of the Presidency to which such portion of an army belongs can be referred to as a legal source for instituting Courts-Martial. *Ib.*

[1] In consequence of the decision in this case, the late amended India Mutiny Act was immediately passed, but a number of puzzling questions still remain on the subject. Note by Sir E. Perry.

6. If a portion of an army belonging to one Presidency be temporarily placed under the command of the Commander-in-Chief of another, the Commander-in-Chief of the Presidency to which the said portion of an army belongs is the exclusive authority for instituting a Court-Martial for the trial of a soldier in such portion of an army, and not the Commander-in-Chief of the Presidency in which it is serving. *Ib.*

7. In Sec. 3. of the 3d and 4th Vict. c. 37. the words "under his command," do not refer to the Commander-in-Chief issuing the warrant, but to the officer to whom it is directed. *Ib.*

8. Semble, The authority to delegate their powers of instituting Courts-Martial, which the Commanders-in-Chief of the three Presidencies possess, depends upon mutual arrangement, and the rules of military etiquette. *Ib.*

9. Sec. 10 of the 3d and 4th Vict. c. 37. does not apply to Commanders-in-Chief at all, but only refers to those cases wherein Her Majesty is competent to issue a commission or warrant. *Ib.*

10. The Commander-in-Chief of Her Majesty's forces in any of the Presidencies holds no warrant from Her Majesty for holding Courts-Martial over the Honourable Company's forces, but only over those of the Crown. *Ib.*

11. There is nothing in the 3d and 4th Vict. c. 37. to prevent the Commander-in-Chief of a Presidency from delegating the jurisdiction vested in him over the Presidency's army, wherever that army, or a portion of it, goes, to any officer whatever, whether under his command or not. *Ib.*

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2. *Sutler.*

12. A person who traded and was a resident within the British cantonments at Cawnpore, and dealt in general in European articles, which he principally disposed of to the military stationed there, was held to come within the description of a Sutler, and to be subject to military law. *Bailie* v. *Stewart.* *Circa* 1797. 2 Str. 152. (Sup. Cot. Calc.)

13. To justify the imprisonment of a Sutler under the 22d Article of the 11th Section of the Articles of War for the Honourable Company's forces serving in India, the force must be at the time in the field; and such an imprisonment was held not to be justifiable where a force was merely considered as a field force, and though a force ready at all times to take the field upon the shortest notice. *Smith* v. *Gore.* 27th Sept. 1811. 2 Str. 142.

II. In the Courts of the Honourable Company.

14. Martial law, established under the authority of Government, operates to the exclusion of all other tribunals, and allows of no civil action for acts done or authorized during its continuance. And where the appellant complained of acts which the Court considered were done under certain powers vested in the respondent, by an authority fully competent to the giving thereof, and during the full operation of martial law, the Court held, that the appellant's claim should have been dismissed in the first instance, under Sect. 10. of Reg. II. of 1802, and dismissed the appeal. *Veeraeethal* v. *The Shevagunga Zumeendar.* Case 1 of 1807. 1 Mad. Dec. 3. —Oakes, Scott, & Hurdis.

ARREARS OF REVENUE.—See Revenue, *passim*; Sale, *passim*.

ARREST.

1. A person who was subpœnaed to attend at the Examiner's office in Calcutta, from his residence in the Mofussil, having, after he left the office, gone to attend a suit in the

Sudder Dewanny Adawlut, in coming from whence he was arrested by process out of the Supreme Court, will not be entitled to be discharged without the Court being satisfied that the Sudder Dewanny Adawlut would have protected him under like circumstances, from an arrest, by their own process. *Ex parte Reid.* 23d Jan. 1819. East's Notes, Case 95.

2. An arrest on attachment for non-payment of money on an award will be considered an arrest on mesne process. *The Queen* v. *Peer Ally.* 17th Feb. 1840. Mor. 306.

3. A defendant indicted for a misdemeanour, and not entering into recognizances, and only traversing the indictment to the next sessions, will not be protected from arrest in coming to Court after the sessions are over for the purpose of entering into recognizances before a Judge in chambers. *Ib.*

4. A party may be arrested in the verandah of the Court-house while the Court is sitting, but not in the Court itself. *Ib.*

5. Semble, When a *capias* has issued, and the defendant has been arrested, the application for his discharge should be to set aside the Judge's order on which the *capias* issued, and not to set aside the bail-bond and discharge the sureties. *Macgregor* v. *Sheddings.* 8th Aug. 1843. 1 Fulton, 216.

ARSON.—See Criminal Law, 73.

ARTICLES OF WAR.

1. The power of the Crown to make articles of war by the 27th Geo. II. s. 8. is binding upon persons not strictly military. *Smith* v. *Gore.* 27th Sept. 1811. 2 Str. 142.

2. To justify the imprisonment of a Sutler under the 22d Article of the 11th Section of the Articles of War for the Company's forces serving in India, the force must be at the time in the field. *Ib.*

3. Such an imprisonment was not held justifiable where a force was merely considered as a field force, and though a force ready at all times to take the field upon the shortest notice. *Ib.*

ASSAULT.—See Criminal Law, 74 *et seq.*

ASSESSMENT.

I. Assessment under the 33d Geo. III. c. 52. s. 158.

II. Land Assessment.

1. *Generally*, 3.
2. *Fixed Rent*, 10.
3. *When increased*, 12.
4. *Measurement*, 20.
5. *Alteration of Assessment.*—*See* Governor-General, 2.

I. Assessment under the 33d Geo. III. c. 52. s. 158.

1. If a Justice grant a warrant of distress against a person for the non-payment of his share of the assessment, evidence of non-repairs, &c., in the vicinity of the house of the plaintiff will not sustain trespass by him against the Justice who granted the warrant. Nor can general objections to the assessment be tried in such action. *Compton* v. *Gahagan.* 9th April 1812. 2 Str. 161.

2. An assessment of property out of Madras is good, under the 33d Geo. III. if within the limits as settled by the order of the Governor in Council of the 2d November 1798 for the jurisdiction of the Court of the Recorder. *Ib.*

II. Land Assessment.

1. *Generally.*

3. The annual rent demandable from a dependent *Talookdár* by the

Zamíndár should be fixed on a measurement of the lands and estimate of their produce, by deducting 10 per cent. from the produce as the profit of the *Taluokdár*, together with the actual charges of collection, the residue to form the rent demandable by the *Zamíndár*. *Bunchanund* v. *Hurgopal Bhadery and another*. 21st July 1806. 1 S. D. A. Rep. 145.—Harington & Fombelle.

4. It was held, that in fixing the rent of a dependent *Taluokdár*, the charges of collection and 10 per cent. must be deducted from the actual produce of his lands, as directed by Reg. V. of 1812. *Gopee Mohun Thakoor and another* v. *Radha Mohun Ghose*. 29th June 1812. 2 S. D. A. Rep. 17.—Harington & Fombelle.

5. During the time a certain *Pergunnah* belonging to Government was held *Khás*, certain lands were made free of assessment by *Lákhiráj sanads* duly sanctioned: after this the *Pergunnah* was sold by auction as a *Zamíndárí*, subject to a specific *Jama*. The purchaser sued Government for a deduction in his *Jama*, on account of the lands included in the previous grants; but the claim was dismissed, the *Jama* payable having been distinctly mentioned in the proclamation advertising the sale. *Baboo Birynath and others* v. *The Collector of Burdwan*. 29th May 1817. 2 S. D. A. Rep. 240. Ker & Oswald.

6. Favourable quit-rents are included in the assets upon which the permanent assessment of every *Zamíndárí* was formed. *Rajah C. Vencatadry Gopal Jagganadha Rao* v. *Khajah Shumsooddeen and another*. Case 16 of 1817. 1 Mad Dec. 179.—Scott & Greenway.

7. An engagement having been taken from a landholder in Cuttack to pay so much rent for his *Taluok* in the event of all the lands therein comprised being declared by the result of the suit which he had instituted to be liable to assessment, it was held by the Commissioner, that on a decree to that effect the revenue of such lands should not belong to Government, though exceeding ten *Bighás*. The decree of the Commissioner was affirmed by the Sudder Dewanny Adawlut. *Gungadur Peharee and others* v. *Hurchunder Ghose and others*. 29th July 1823. 3 S. D. A. Rep. 253.—Leycester & Dorin.

8. The plaintiffs sued to have two *Tarafs* re-annexed to their estate, on the plea that they were dependent; but their claim was rejected, on proof that they had been separated before the plaintiff's purchase of the estate, and distinctly assessed by the Collector, and the assessment confirmed by Government. *Collector of Zillah Rajshahy* v. *Rughoonath Nundee and another*. 16th August 1824. 3 S. D A. Rep. 400.—Smith & Martin.

9. In an action between *A* and *B*, the issue was, whether a parcel of land claimed by *A* was his assessed tenure, recorded on the rent-roll of a Government *Mahall*, or component of the assessed estate of the defendant *B*. Judgment in the last resort went in favour of *B*. About seven years therefrom *A* sued *B* and the Government to recover back the principal of, and interest on, the assessment of fourteen years which he had paid the Government. By judgment in appeal, *B* recovered the principal from the Government alone, because, by the judgment in a prior suit, it was established that the Government had received a double assessment on the same land, a plea that the Government was not a party being disregarded. *Collector of Zillah Chittagong* v. *Krishn Kishwar*. 30th Sept. 1833. 5 S. D. A. Rep. 331—Braddon.

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2. *Fixed Rent.*

10. Where a *Zamíndár* claimed from two *Taluokdárs* a balance for arrears of rent for a certain period, during which the latter were alleged to have paid at too low a rate, the rent of the *Taluokdárs* appearing va-

riable, and there not being settled rates of similar tenures in the *Pergunnah* according to which it could be determined; it was held, that the rate should be fixed for future years by actual survey, and for past accounts should be settled at the rate so fixed.[1] *Bunchanund* v. *Hurgopal Bhadery and another.* 21st July 1806. 1 S. D. A. Rep. 145.—Harington & Fombelle.

11. Judgment for the right to hold lands in under-tenure does not necessarily imply the right to hold at a fixed rent. *Fiazuddin* v. *Ray Chander Ray.* 17th July 1830. 5 S. D. A. Rep. 46.—Ross & Turnbull.

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3. *When increased.*

12. On a claim being preferred by the respondent, a *Talookdár*, against the appellants, *Zamíndárs*, to recover an excess of rent levied from his *Talook*, the claim was disallowed, it appearing that additions had been made to the assessment within the period of twelve years antecedent to the decennial settlement, and there being no mention made of a *Mukarrarí* tenure on his part in any authentic document.[2] *Bhobindur Naraen and another* v. *Bishennath Rai.* 14th Aug. 1805. 1 S. D. A. Rep. 100.—H. Colebrooke, Harington, & Fombelle.

13. A claim to hold a *Talook* at a fixed rent in a *Zamíndárí* purchased by the defendant, was adjudged in favour of the plaintiffs, on proof of an *Istimrárí* tenure, and in conformity with Sec. 49. of Reg. VIII. of 1793, by which dependent landholders, *Istimrárdárs*, or tenants at a fixed rent, holding their tenures from *Zamíndárs*, or superior landholders, who have already "held their land at a fixed rent for more than twelve years," were declared "not liable to be assessed with any increase, either by the officers of Government, or by the *Zamíndár*, or other actual proprietor of the land. *Chintamunee Mustofee* v. *Durupnarain Rai.* 16th July 1810. 1 S. D. A. Rep. 302.—Harington.

14. The assessment imposed at the time of the decennial settlement on a *Talook* held under a *Jangalboorí* tenure, is liable to be enhanced, according to the *Pergunnah* rates, on a measurement of the lands brought into cultivation. *Khaja Arratoon and another* v. *Doorgapershaud Bhuttacharjya and others.* 18th July 1820. 3 S. D. A. Rep. 34. — Fendall & Goad.

15. A dependent *Talook*, for which a *sanad* had been granted by the former proprietor to hold it at a fixed rent, but which was granted within twelve years before the decennial settlement, was held to be liable to increase of assessment by the present proprietor, though not an auction purchaser. *Khaja Neekoos Marcar* v. *Ram' Lochun Ghose.* 20th March 1823. 3 S. D. A. Rep. 221.—C. Smith & Shakespear.

16. Held, that lands granted by the former Soobadar of Cuttack to a

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[1] There being no rule expressly applicable to the adjustment of rent in this case, the decision was passed upon an equitable consideration of the right of the *Zamíndár* to receive a variable rent proportionate to the produce of the lands which formed a constituent of his *Zamíndárí*, and of the right of the *Talookdárs*, as holders of an hereditary though subordinate tenure, to participate in the rent produce of the lands composing it.—Macn.

[2] The period of twelve years here noticed has reference to Sec. 49. of Reg. VIII. of 1793, which declares that tenants at a fixed rent (denominated *Istimrárdárs*, or *Mukararídárs*), "who have held their land at a fixed rent for more than twelve years, are not liable to be assessed with any increase, either by the officers of Government, or by the *Zamíndár*, or other actual proprietor of land." This Rule was enacted at the time of forming a permanent settlement of the land revenue in the year 1790, and was in consistency with another Rule (Sec. 76. of Reg VIII of 1793), whereby Government exempted from any increase of the public assessment "all separate *Talooks*, as well as all lands heretofore paying revenue immediately to Government, which may have been held at a fixed *Jama* during the last twelve years."

Khundait, or *Sirdar* of *Pykes*, who had held them at one invariable quit rent for more than twelve years before the Company's Government, are not liable to any increase of assessment, although the grant did not specify the terms *Múkarrarí*, *Istimrárí*, or other word signifying perpetuity. *Moohummud Ismail Jemadar* v. *Rajah Balungee Surrin.* 3d May 1824. 3 S. D. A. Rep. 346. — Ahmuty & Harington.

17. On a suit by the respondent to be exempted from the demand of increased assessment, his claim was disallowed, on proof that the former Collector had erroneously granted a *Zamíndárí potta*, deducting an allowance for *Dehyak* and *Bhuray*, which was the right of the *Tahsíldárs* alone, and had been resumed on settlement with the proprietors. But the decree providing that no further increase should be demanded, a petition for review was granted, and it was finally decreed that the respondent should not be exempted from the increased demand, but that, if dissatisfied therewith, he might apply for a new settlement. *The Collector of Benares on the part of Government* v. *Baboo Ulruk Sing.* 25th June 1824. 3 S. D. A. Rep. 381.—Shakespear & Martin.

18. Lands held at an invariable quit-rent by the appellants and their ancestors under *Muharrarí pottas* for a period of thirty-eight years were held not to be liable to any enhanced assessment, though the grants did not specify that the tenure should be hereditary. *Joba Singh and others* v. *Meer Nujeeb Oollah and others.* 29th Nov. 1827. 4 S. D. A. Rep. 271.—Ross.

19. An under-tenant of *Mál* land in the twenty-four Pergunnahs, repelled the claim of the *Talookdár*, to levy enhanced rent on his tenure, at the improved *Pergunnah* rate, by pleading exemption from increase on the rent settled by the government survey and *Jamabandí* of 1190 B. S. (1783), and continuous payment at that rate. On proof that the local rate had risen, and on defect of proof by the defendant as to the legal fixed character of the rent heretofore paid by him on his tenure, his plea was overruled, and the right of the superior landlord to proceed to assess the tenure at the improved customary rate, under Reg. V. of 1812, awarded. *Mt. Deb Ráni and others* v. *Ram Narayan Nág.* 24th March 1831. 5 S. D. A. Rep. 102.—Turnbull & Ross.

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4. *Measurement.*

20. In a suit for the adjustment of the rent of a dependent *Talookdár*, assessable at the *Pergunnah* rates, it was determined that the land should be measured with the rod in common use, and assessed according to the rates of a former settlement, inclusive of *Abwáb* and *Salámí*, ordered to be consolidated by Reg. VIII. of 1793, and subject to the customary deductions in favour of the *Talookdár*. *Ramkaunt Dutt and another* v. *Gholam Nubee Chowdree.* 10th May 1812. 2 S. D. A. Rep. 55.—H. Colebrooke & Fombelle.

21. In the province of Benares the land measure described in Sec. 5. of Reg. II. of 1795 is not restrictive so as to bar reference to any other standard locally current. Nor is the intervention of *Ameens* and *Kanúngós* for adjustment of money-rents imperative, particularly since the enactment of Reg. V. and Reg. XVIII. of 1812. *Raghubír Ráy* v. *Bábú Sheo Naráyan Singh.* 20th Dec. 1830. 5 S. D. A. Rep. 77. — Leycester, Sealy, & Ross.

22. A measurement by a Collector, made at the time of entering into engagements with a *Zamíndár*, is no bar to the *Zamíndár* re-measuring the lands, to ascertain the extent of the holdings of his tenants. *Government* v. *Sheik Fakeerullah.* 20th June 1837. 6 S. D. A. Rep. 171.—Braddon & Hutchinson.

ASSETS.—See ASSUMPSIT, 2; EXECUTOR, 96 *et seq.*

ASSIGNMENT.

I. GENERALLY, 1.

II. OF BANKRUPT'S EFFECTS.—See BANKRUPT, 4 *et seq.*

I. GENERALLY.

1. The assignment of a conditional order for the payment of a sum of money to a house of agency in Calcutta, by such house of agency to a third person, was held to be legal and valid. *Rajah Bejai Govind Singh and others* v. *Fullarton.* 27th Feb. 1838. 6 S. D. A. Rep. 222.—Rattray & Money.

ASSISTANCE.—See ATTACHMENT, 8, 10.

ASSUMPSIT.

I. GENERALLY, 1.

II. BY ASSIGNEES OF A BANKRUPT.—See BANKRUPT, 9.

I. GENERALLY.

1. It was held that a payment of Company's paper, which was accepted as money, will support a count for money paid. *Kissenchunder Roy* v. *Surroopchunder Mullick.* 10th Feb. 1820. East's Notes, Case 112.

2. In *assumpsit* against a Hindú heir, it is not necessary, though the promises are laid in the time of the ancestor, to allege assets come to his hand; but he must plead no assets, or *plene administravit. Collypersaud Mookerjee* v. *Khetterpaul Sucier.* 2d Term 1820. East's Notes, Case 114.

3. In an action of *assumpsit* by a Muhammadan plaintiff, the defendant, being a British subject, is entitled to the benefit of the British law. *Jhow Khan* v. *Imlach.* Circa 1826. Cl. R. 1834. 20. Mor. 243.

4. *Assumpsit* lies on a foreign judgment, it not being a record in India. *Khankee Doss* v. *Jogulkissen Doss.* 16th June 1837. Barwell's Notes, 115.

5. A plea, in *assumpsit* for goods sold and delivered, that the goods did not correspond with the representation of the seller, is bad, but may be amended. *Schneider* v. *Morgan.* 12th June 1838. Mor. 243.

ATTACHMENT.

I. IN THE SUPREME COURTS.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

1. *What Property may be Attached,* 15.
2. *Alienation of Property under Attachment,* 19.
3. *Erroneous Attachment,* 28.
4. *Practice, on,* 31.
5. *By Collectors.—See* COLLECTOR, 3, 4.
6. *Costs of.—See* COSTS, 55.

I. IN THE SUPREME COURTS.

1. An attachment will not be granted against a witness in an equity cause without an affidavit of service of *subpœna,* and of his being a material witness. *Ramsunder Narain Mitter* v. *Luckynarain Chowdry.* Hyde's Notes. 2d Feb. 1778. Mor. 262.

2. An attachment was refused to be granted by the Supreme Court against the East-India Company to compel answer to a bill; but a rule to shew cause why a sequestration should not issue to compel an answer to the amended bill of complaint was

granted.[1] *Keighley and another* v. *The East-India Company.* Hyde's Notes. 19th March 1792. Mor. 269.

3. A rule *nisi* for a writ of attachment was discharged with costs, for irregularity, because the rule was not served personally. *Small* v. *Sheppard.* 30th Oct. 1823. Cl. R. 1829. 268.

4. And though the defendant had moved to enlarge the rule, it was held not to dispense with personal service. *Sheriff* v. *Bowanneypersaud.* 11th March 1824. Cl. R. 1829. 268.

5. To ground an attachment for non-payment of costs there must be a personal service of the order, and a letter of attorney from the party to whom they are payable. *Doe dem. Bibee Jumaun* v. *Mirza Ally.* 2d Term 1827. Cl. Ad. R. 1829. 45.

6. An attachment for want of appearance, issued the same day that the bill had been amended, was held to be irregular. *Collypersaud Hazrah* v. *Mandubchunder Soor.* 1st Term 1828. Cl. Ad. R. 1829. 46.

7. An attachment for rescuing a prisoner was granted, although the warrant was directed to the person executing it, not in his real name, but in the name by which he was generally known. *Ladleymohun Tagore* v. *Rajessorey Dabey.* 27th Jan. 1829. Cl. Ad. R. 1829. 49.

8. Writs of attachment and assistance cannot be moved for together. *Radanauth Chuckerbutty* v. *Bermomoye Dossee.* 2 Feb. 1837. Mor. 284.

9. Before an attachment can be moved for, after the death of the attorney of the party against whom the attachment is applied for, an order calling on the party to appoint a new attorney must be obtained, and personally served. This order is obtained by petition. Service by post is not sufficient. *Stephen* v. *Hume.* 19th June 1837. 1 Fulton, 73.

10. A writ of assistance may be moved for under equity process Rule 7[1], before the return of the attachment. *Anundnarain Ghose* v. *Bissumber Holdar.* Feb. 1840. Mor. 306.

11. Where the party refuses to deliver up possession of the land, the intermediate writ of attachment, as well as the intermediate writ of injunction, is dispensed with under the additional equity process Rule[2]; and the practice is, to move for the writ of assistance at once, upon an affidavit of the due service of the writ of execution and demand of possession, and refusal. *Ib.*

12. An attachment will not be set aside on the ground that the execution of it will cause loss of employ to the party against whom it has issued. *Ladleymohun Tagore* v. *Rajessorey Daby Doss.* 27th June 1842. 1 Fulton, 15.

13. After appearance entered by the plaintiff for the defendant, an attachment may issue, though the service of the *subpœna* was not personal. *Woodubchunder Saba* v. *Komlacaunth Sircar and others.* 26th Jan. 1843. 1 Fulton, 132.

14. The Court refused to grant a writ of attachment against defendants for a breach of injunction, prohibiting proceedings in any of the Mofussil Courts, the defendants having proved that the proceedings instituted by them before the Sudder Ameen, were taken with a view to carrying the decree of the Supreme Court into execution. *Hurropersaud Ghose* v. *Ramnarain Mookerjee and others.* 20th Feb. 1843. 1 Fulton, 160.

II. In the Courts of the Honourable Company.

1. *What Property may be Attached.*

15. The Court declared that a

[1] Sequestration against the Company for want of appearance is provided for by the Charter, Clause XVI. See 1 Sm & Ry 19

[1] 2 Sm. & Ry 168

[2] 2 Sm & Ry 172 *a* 172 *b*.

party was at liberty to attach, under the decree of the Court, whatever property he might point out, such attachment being at his own risk, leaving the persons in whose possession it might be to bring an action in the Civil Court for removal of the attachment. This principle was declared to hold in all executions wherein application was made for an attachment. *Muha Lukmee* v. *The Grandsons of Kripashookul.* 29th July 1817. 2 Borr. 510.—Prendergast & Sutherland.

16. Where an action was brought to remove an attachment from property which one brother (against whom was an unsatisfied decree) had made over to another brother, under colour of his defraying their mother's funeral expenses, the attachment was confirmed on one-half the property by the Zillah Assistant Judge (Grant); and on appeal to the Judge (Kentish), on the ground that the transaction appeared fraudulent, and that the note upon which the transfer was made was on unstamped paper; this decision was modified by the Sudder Dewanny Adawlut, according to the opinion of the law officers, and it was ordered that Rs. 10. should be allowed for the mother's funeral expenses, and that the attachment should be raised from certain jewels, part of the property attached, which had not been proved to be part of the ancestral estate. *Hurreedass Asaram* v. *Ghirdhurdass Kevuldass.* 14th Mar. 1831. Sel. Rep. 43.—Barnard, Anderson & Baillie.

17. Held, that a pension granted by Government is not liable to be attached in satisfaction of a decree of Court, and is payable only to the party to whom the Government may have assigned it. *Kadir Alee and others* v. *Mt. Chowrassee.* 6th Feb. 1830. *Serajoon-Nissa Khanum, Petitioner.* 6th April 1839. 1 Sev. Sum. Cases, 89.—Reid & Tucker.

18. An attachment cannot be placed on a son's share of ancestral property, specially appropriated for his maintenance, in satisfaction of his father's debts, during the lifetime of the latter. *Amrut Row Trimbuck Peytay* v. *Trimbuck Row Amrutayshwar and others.* 19th Sept. 1839. Sel. Rep. 218.—Pyne & Greenhill.

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2. *Alienation of Property under Attachment.*

19. An attachment of lands by the Supreme Court, was pleaded by the purchaser at the Sheriff's sale, against the validity of a mortgage and conditional sale of part of the lands during the attachment. The plea was disallowed, on proof that the Sheriff's sale took place in satisfaction of a different demand, and in execution of a different judgment than that under which the original seizure was made; it not being shewn, also, that any legal attachment by the Supreme Court existed at the time of the mortgage on which a judgment had been obtained in the Zillah Court before the Sheriff's sale. *Petumber Ghose* v. *Ghureeb Ollah.* 3d Oct. 1806. 1 S. D. A. Rep. 167.—H. Colebrooke & Fombelle.

20. But the private sale of a dependent *Talook,* made by the *Zamíndár* while his *Zamíndárí* was under attachment by the Supreme Court, which ended in the public sale of it, was declared invalid against the purchaser at the public sale, though obligatory on the *Zamíndár* or his successor in the event of the public sale being set aside by the Supreme Court.[1] *Munroop Rai* v. *Ramjee*

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[1] This decision was partly founded on the principle that the owner of an estate, disposing of part of it as an independent tenure while the estate is under attachment preparatory to a public sale, binds himself and his heirs by such a disposal, in the event of the attachment being subsequently withdrawn, or the public sale, if made, being set aside, and the estates restored to the original owner or his legal representative; though if the public sale, for which the attachment was made, take place, and remain in force, any transfer or lease made by the late proprietor during the attachment is not valid against a public purchaser.—Macn.

Bunoja and another. 22d Dec. 1806. 1 S. D. A. Rep. 172.—H. Colebrooke & Fombelle. *Pitumber Bhurtacharij* v. *Ramjee Bunoja.* 3d July 1807. 1 S. D. A. Rep. 195. —Harington & Fombelle.

21. Property belonging to a public defaulter being attached, and about to be sold in satisfaction of the dues of Government, should another person claim the property, it is sufficient that, previous to the sale, a summary inquiry be made into the merits of the claim. A formal inquiry is not in the first instance necessary. But it is at the option of the claimant to institute subsequently a regular suit; and if his title be proved, the sale will be void, and the property adjudged to him with costs. *Vakeel of Government and others* v. *Mt. Kishoree.* 25th Sept. 1815. 2 S. D. A. Rep. 162.—Harington & Ker.

22. The same rule holds good with regard to property under attachment, and about to be sold in satisfaction of a decree. *Ib.*

23. Where *A* sued for the removal of the attachment of a judgment creditor, on the ground that the property had been previously made over to him by a deed of transfer, the Court, on evidence, decided that the deed was a fabrication, and ordered the attachment to stand good, decreeing that *A* should pay costs and interest at 12 per cent., on the amount to be recovered on the sale of the attached property, from the date on which *A* sued to have the attachment removed. *Deoshunkur Ramanund* v. *Kaseeram Juyanund.* 3d July 1823. 2 Borr. 534.—Romer, Sutherland & Ironside.

24. The heirs of a person deceased cannot alienate property by sale while there is an unsatisfied decree pending against the deceased. And where a person purchased property from the heirs of a deceased against whom there was an unsatisfied decree pending, and for which such property had been attached, the right of the purchaser was held to be subservient to the attachment, which was decreed to remain in full force until such decree should be satisfied from the property attached, or in any other way the heirs might prefer. *Luggah Fattajee* v. *Trimbuch Herjee.* 4th May 1830. Sel. Rep. 33.

25. Where *A* sued his brother *B* for the half of the expenses incurred by their father in *B*'s marriage, and obtained a decree in his favour, in satisfaction of which he attached certain property belonging to his brother *B*, who had previously died; *C* sued to remove this attachment, on the ground that the son of *B* had made over the property so attached to him in *San Gerania;* it was held, that *B*'s property was answerable: and the *San Gerania* bond having been passed long since the decree under which the property was attached, the alienation of such property by the son of *B* under it, whilst such a demand remained unsatisfied, was held to be invalid. *Dunna Enderjee* v. *Nurotum Peetamber.* 5th June 1830. Sel. Rep. 34.

26. Where a Hindú had an interest in a moiety of a house (ancestral property) alienated by his father with his consent; it was held, that such alienation was invalid, there being a judgment remaining unsatisfied against him; and an attachment placed on the house under such judgment was held to be good. *Duyashunker Kasseeram* v. *Brijvullubh Motheechund.* 13th Aug. 1830. Sel. Rep. 41.

27. Where, in a suit to raise an attachment from off a part of a house, the house had been sold under the attachment which should have been levied on the shares of two persons only; it was held, that the sale was void, and should be annulled, with power to resell the two shares to which the attachment should have been confined. *Luximeedas Laldas* v. *Mt. Hafizboo and another.* 24th March 1831. Sel. Rep. 48.—Barnard, Anderson, & Baillie.

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3. *Erroneous Attachment.*

28. A *Zamíndár* is entitled to compensation for any loss actually sustained by him in consequence of an erroneous attachment of his *Zamíndári* by the Collector, however unintentional it may be. *Sree Rajah Roydurpa Runga Rao Bahadoor* v. *Heirs of Smith.* Case 12 of 1824. 1 Mad. Dec. 480.—Grant, Cochrane, & Oliver.

29. Where *A* sought to recover damages, laid at Rs. 1515 . 2 . 85, on account of an attachment levied upon his property in pursuance of a judgment given in the Zillah Court, which was afterwards reversed in the Sudder Adawlut, the Zillah Court adjudged damages to the amount of Rs. 30. On appeal, the Sudder Court held that damages were recoverable; and considering that the extent of damage had not been properly investigated, referred the case back to the Zillah Court, with directions to assemble a *Pancháyit* to assess the damages; and the latter awarded Rs. 154. This award was affirmed by the Court, with one-tenth of the costs of the whole suit, and the *Pancháyit's* expenses, leaving the remaining nine-tenths of the costs to be discharged by *A*. *Sallehkan* v. *Dayamkan.* 25th Feb. 1830. Sel. Rep. 31.

30. Where *A* claimed an *Inaám* village, and eleven years produce thereof, granted to *A* by the late Peshwa, and attached before the commencement of the British rule by the farmer of the province, he, as asserted, not having authority for the act, the question at issue being on the validity, or otherwise, of the resumption of the village as the act of the Peshwa's government; it was held, that the farmer was not proved to be a competent authority to attach the village; and the same was ordered to be restored to *A*. The claim for eleven years' revenue was considered as a money debt, and unsustainable under Sec. 3. of Reg. V. of 1827; and six years' produce was awarded, in conformity with the provisions of the said Regulation.[1] *Mills* v. *Modee Peshtonjee Khershedjee.* 31st Dec. 1831. Sel. Rep. 111.—Barnard, Baillie, & Henderson.

4. *Practice on.*

31. The Zillah Judge having applied to the Court of Appeal to know whether a search warrant might be granted to a party who had made application for an attachment, the Court gave its opinion, that a search warrant could not be granted in civil process; but it was not considered objectionable that property should be attached in the presence of a civil officer under the Judge's instructions, when pointed out by the party claiming the same at his risk. *Muha Lukmee* v. *Grandsons of Kripashoo-kul.* 19th July 1817. 2 Borr. 510.—Prendergast & Sutherland.

32. A suit for the removal of an attachment must be laid in the amount of that decree under which the attachment issued. *Ichhashunkur Sheoshunkur* v. *Mt. Beejeebuhoo* 22d Feb. 1823. 2 Borr. 469.—Sutherland & Ironside.

ÁTISH BAHRÁM.

1. Certain Pársís of the *Rasmí* sect sued others of the *Kadímí* sect to prevent the building of an *Átish Bahrám*, or fire temple, by one of the latter; the *Rasmís* affirming that only one *Átish Bahrám* could, by their laws, exist in one place; and that they made their vow to build one before the *Kadímís* did. The *Rasmís* failing to prove the fact that more than one temple was not allowed in the same city, it was settled by arbitration, under the directions of the sitting Judge, that both parties should be at liberty to build temples, the *Rasmís* being allowed to consecrate theirs first, and the *Kadímís* theirs at

[1] This decree was affirmed by the Judicial Committee of the Privy Council on the 5th of July 1838.

any time subsequently. *Deen Shah and others* v. *Pestunjee Kala Bhaee.* 4th Sept. 1822. 2 Borr. 375.—Sutherland.

ATTESTATION.—See WILL, 40.

ATTORNEY.

I. IN THE SUPREME COURTS.
1. *Appointment and Admission of*, 1.
2. *Privilege of Attornies*, 3.
3. *Bill of Costs*, 5.
II. IN THE COURTS OF THE HONOURABLE COMPANY, 8.

I. IN THE SUPREME COURTS.

1. *Appointment and Admission of.*

1. The appointment of the Company's attorney must be made by motion in the Supreme Court, that the appointment be filed by the Keeper of the Records: this motion will be minuted in all the offices, and then the appointment must be filed by the Keeper of the Records, and kept by him among the records of the Court. *In the matter of Polfrey.* Hyde's Notes, 23d Oct. 1780. Mor. 265.

2. The Supreme Court at Bombay has no power to admit persons as attornies and solicitors to practice in the Courts there, except such as are qualified in the manner pointed out by the Bombay Charter and Letters Patent of 1823 establishing the Court; viz. those who have been admitted attornies or solicitors in one of the Courts at Westminster, or were practising in the Recorder's Court at Bombay at the time of the publication of that Charter.[1] *Morgan* v. *Leech.* 12th Feb. 1841. 3 Moore, 368.

2. *Privilege of Attornies.*

3. The Court refused to enter an *exoneratur* on the bail piece given by an attorney, who had obtained leave of absence to go home, and who had left Calcutta, but who subsequently returned to Calcutta without shipping himself. *Mathews* v. *Howard.* 15th Jan. 1817. East's Notes. Case 58.

4. Where an attorney of the Supreme Court had been sued in the Petty Court, and moved for a *certiorari* to remove the proceedings into the Supreme Court on his privilege of an attorney, in analogy to the privilege of attornies to the Superior Courts at Westminster, the Court agreed, that no such privilege existed in the case of the officers of the Court, and could not therefore be recognized; as the Judges *alone* are, by the Charter, exempted from arrest in civil suits, and *no other exemption* is made.[2] *Burne* v. *Trebeck.* 29th Oct. 1821. East's Notes. Case 29.

3. *Bill of Costs.*

5. The 76th Plea Rule, which requires an attorney to *deliver* in his bill to the client before any demand be made for the amount, is not satisfied by leaving the bill taxed with the client for a few hours, and then taking it back again; for *delivering in* means a delivery to and a *resting with*, in order that the client may be enabled to have full consideration of the items, and to take advice up to the period of the settlement.[3] *Comberbatch* v. *Kistopreah Dossee.* 9th Nov. 1816. East's Notes. Case 56.

6. A rule to retax an attorney's bill must be a rule *nisi*. *Ramrutton Mullick* v. *Tarrachund Doss.* 4th June 1825. Cl. R. 1829. 244.

[1] But see Act XIII of 1845.

[2] *Per Curiam*; "It is only in matters of mere practice that we are to follow the Court of King's Bench when we have no different rule of our own. This decision does not preclude the Court from granting a *certiorari* to remove any cause out of the inferior Court upon any proper ground, on the application of an attorney

[3] *Sed quære*, as to the time given after the delivery in before action.

7 An attorney not taxing his costs, pursuant to order to effect a change, liberty was given to the new attorney to file his warrant, and take the papers at the end of fourteen days. *Bindabun Doss* v. *Hunnoomaun Doss.* 22d Jan. 1829. Clarke's Ad. R. 1829. 48.

II. In the Courts of the Honourable Company.

8. Held, by the Sudder Dewanny Adawlut, that attorney's costs incurred by a creditor for making a demand on a resident in the Mofussil, who was not amenable to the jurisdiction of the Supreme Court, are not recoverable by action in the Mofussil Courts. *Atkinson* v. *Evans.* 30th June 1836. 6 S. D. A. Rep. 75.—Stockwell & Robertson.

AUCTION.—See Sale, *passim.*

AUMEEN.—See Ameen, *passim.*

AVIGNAT NAYR.

1. An *Avignat Nayr* instituted an action for damages on account of defamation, and died during the pendency of the suit, which was continued by his successor in the office. It not being shewn that the injurious acts complained of by the late *Avignat Nayr* operated in any way to cause damage or pecuniary loss to his successor, it was held, reversing the decree of the Lower Court, that an action could not lie on the part of the successor. *Peratt Namboodry* v. *Pyoormulla Avignat Nayr.* Case 15 of 1824. 1 Mad. Dec. 491.—Grant, Gowan, & Lord.

ÁVAK VYÁJU.—See Insurance of Ships, *passim.*

AWARD.—See Arbitration, *passim.*

AIMAH.—See Land Tenure 31*a*. Malikáneh, 2.

BA FARZANDÁN.—See Resumption, 12.

BAIL.

I. In the Supreme Courts.
1. *Deposit of Money in lieu of Bail*, 1.
2. *Qualification of Bail*, 5.
3. *Notice of Bail*, 6.
4. *Notice of Justification*, 10.
5. *Justification of Bail*, 13.
6. *Costs.—See* Costs, 25.
7. *In Criminal Cases. — See* Criminal Law, 45*a*, 45*b*, 78, 79.

II. In the Courts of the Honourable Company, 19.

I. In the Supreme Courts.

1. *Deposit of money in lieu of Bail.*

1. Where money was paid into Court in lieu of bail, it was ordered by the Court, that in future the sum swore to, and Rs. 500 for costs, should be paid, and not the bailable sum as theretofore. *Rajchunder Chowdry* v. *Nobhissore Dutt and others.* 18th June 1810. Sm. R. 141.

2. The Sheriff ought to pay into Court, on the 1st day of Term, without motion, all monies deposited with him in lieu of bail; and this in pursuance of 43 Geo. III. c. 46. Sec. 3.[1] *Desbruslais* v. *Blisset.* 3d Term 1825. Cl. R. 1829. 229.

3. It is too late for the defendant to move to pay into Court the additional sum of Rs. 200, under deposit of Money Rule 3,[2] after the plaintiff has obtained the usual rule *nisi* to take the money out of Court under

[1] But afterwards it was ruled to be paid *forthwith.* 121st Plea Rule. Cl. Ad. R. 1829. 8, and see the Rules respecting the deposit of money in 2 Sm. & Ry. 83 *et seq.*
[2] 2 Sm. & Ry. 84.

Rule 1, for want of special bail perfected. *Poorun Ram* v. *Gunnoo Sing*. 26th Oct. 1838. Mor. 290.

4. *Quære*, Whether, after notice to justify bail has been given to the plaintiff, the defendant can abandon his notice, and pay money into Court in lieu of bail, without having previously paid the plaintiff the costs of opposing the justification. *Kully Angee and others* v. *M'Gibbin*. 26th June 1844. 1 Fulton, 462.

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2. *Qualification of Bail.*

5. Bail, who are householders in the suburbs of Calcutta, and who live beyond the jurisdiction of the Court, are good bail. *Shaik Loodi* v. *Shaik Punchoo*. 30th Jan. 1826. Cl. R. 1829. 227.

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3. *Notice of Bail.*

6. *Householder* is a sufficient addition in the notice; and a mistake in the notice that the bail was put in before one Judge, when in fact it was put in before another, is not fatal, being cured by putting in the exception. *Habberly* v. *Toulmin*. 1st Nov. 1824. Cl. R. 1829. 225.

7. *Landholder* is not a sufficient description in the notice of bail; and Bow Bazar is an insufficient description of residence of abode. *Puresmoney Dossee* v. *Oddychurn Mullick*. 31st Oct. 1825. Cl. R. 1829. 227.

8. The bail need not point out their property, but the bail must be produced at the time of serving notice to produce them. Two hours after would be bad. *Scott* v. *Gungagovind Bonnerjee*. 3d Term 1824. Cl. R. 1829. 226.

9. A defendant, on giving notice to the plaintiff or his attorney of bail put in, may at the same time give two days' notice of justification, without waiting for the expiration of the twelve days allowed for entering exceptions. Notice served on Saturday must be for Tuesday. For added bail there must be three days' notice. *Anon*. 10th March 1825. Cl. R. 1829. 226.

4. *Notice of Justification.*

10. Bail attending to justify attending at the rising of the Court according to notice of justification for that day, the notice may be saved till the next day, as they had the whole day to justify. *Mudoosoodun Mitter* v. *Bulram Sill*. 28th Jan. 1824. Cl. R. 1829. 227.

11. If notice of justification be given within the twelve days for exception, it does away with the necessity for exception; and after twelve days the defendant cannot, on the ground of no exception entered, obtain his discharge. *Hart* v. *Holmes*. 1st Term 1824. Cl. R. 1829. 225.

12. And bail not having attended at the office of the Plaintiff's attorney with the notice of justification cannot justify. *Ramdhone Ghose* v. *Low*. 17th Jan. 1825. Cl. R. 1829. 226.

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5. *Justification of Bail.*

13. If bail do not justify within four days after exception entered, of which two days' notice must be given, a sequestration will be regular. *Collypersaud Sandell* v. *Muddoosooden Sandell*. 24th Jan. 1825. Cl. R. 1829. 226.

14. Bail cannot justify if there have been *two* or more previous notices of justification, until first paying or securing the costs incurred by such prior notices. The present practice of the Court of King's Bench in England is to be considered the practice of the Supreme Court. *Roopchund Day* v. *Matthews*. 8th July 1825. Sm. R. 137. Cl. R. 1834. 43.

15. *Secus* if there has been only one notice. *Ramrutton Bonnerjee* v. *Rajkissen Chowdry*. 1st March 1832. Cl. R. 1834. 43. *Bhowanny Seebuck* v. *Balgovind and others*. 25th Sept. 1825. Sm. R. 137. Cl. R 1834. 44.

16. Justification of bail is not waived by the plaintiff entering an appearance for the defendant in custody, and serving a rule to plead on him. *Ram-*

chunder v. *Soobulchunder Nundy.* Cl. Ad. R. 1829. 46.

17. After one ineffectual notice of justification, and on second notice, the plaintiff is entitled to an undertaking for payment of costs before the bail can be admitted to justify. *Loll Beharry Sein* v. *Ramchunder Day.* 3d Term 1833. Clarke's Notes, 111. *Ramrutton Chatterjee* v. *Muddosoodun Bonnerjee.* 4th Nov. 1833. *Ib. Bhowannychurn Paul* v. *Prawnkissen Sein.* 5th Nov. 1834. *Ib. Hume* v. *Stephanouse.* 1st July 1835. *Ib. Degumber Chatterjee* v. *Gungagovind Bonnerjee.* 18th Nov. 1835. *Ib.*

18. The costs of an unsuccessful attempt to justify bail must be paid before a second attempt to justify can be made. *Kullee Angee and others* v. *M'Gibbin.* 26th June 1844. 1 Fulton, 462.

II. In the Courts of the Honourable Company.

19. Held, that a public order of Government does not render nugatory bail-bonds entered into previously to the circulation of such order, between *Shroffs* of Zillah Courts with their employers, for the insurance of their fidelity and honesty. *Blackburne* v. *Letchmunpoy.* Case 1 of 1822. 1 Mad. Dec. 313.—Harris & Gowan.

BAILMENT.

I. In the Supreme Courts, 1.

II. In the Courts of the Honourable Company, 2.

I. In the Supreme Courts.

1. A bailee, who acts gratuitously, will not be held answerable for the loss of goods kept by him in the same manner as his own, and which loss he could not prevent. *Binny* v. *Watson.* 25th Aug. 1800. 1 Str. 69.

1 *a.* As a general rule, goods in pledge cannot be re-pledged; but a sub-bailee may hold against a bailor until the bailee's lien is satisfied. *Wood* v. *Goluckchunder Podar.* 1st Term 1843. 1 Fulton, 139.

II. In the Courts of the Honourable Company.

2. Where *A* claimed from *B* the value of timber alleged to have been his property, sent down to Calcutta for sale on his account, and illegally seized by *B*, the claim was dismissed, on proof that the timber was provided for *B*, in pursuance of a contract with *C* and *D*; and that *A*, who was only surety for its conveyance to a certain distance, had no legal right or interest in it after its conveyance to that distance. *Heirs of Shamchurn Sing* v. *Heir of Omr Sing.* 5th Aug. 1808. 1 S. D. A. Rep. 248. —Harington & Fombelle.

3. Where *A*, one of three brothers, deposited jewels in the hands of *D*, with the knowledge of *B* and *C*, his elder and younger brothers, and for the general interests of the family, and *D* established their restitution to *B*, the elder brother and the head of the family, to the satisfaction of the Court; such restitution was held to be sufficient as against any claim by *A* and *C* for the jewels, or their value: such deposit not having been separately made by each brother on their separate accounts, the restoration of the jewels to any one of the brothers was legal. *Totah Rungiah and another* v. *Chenchumma and others.* Case 13 of 1824. 1 Mad. Dec. 482. — Grant, Cochrane, & Oliver.

4. Where *A* had consigned a sum of money to Poona through the hands of *B*, which the latter had failed to deliver, alleging that the persons to whom he had entrusted the money were attacked by thieves on the road, and a portion of the money stolen; it was held, that the owner was subject to loss from robbery when re-

mitting money; but as in this case the robbery had not been established by *B*, and he having acknowledged the receipt of Rs. 1501, he was responsible for the loss. *Semlal Oodakishun* v. *Nainsook Soobaram.* 11th April 1839. Sel. Rep. 196.—Bell, Giberne, & Pyne.

BAIRAGÍ.—See INHERITANCE, 194, 197.

BANDÍ JAMA.—See LAND TENURES, 22 *a*; LIMITATION, 90.

BANDOBAST.—See CAST, 1, 12, 20.

BANKAR.

1. Where *A* purchased at a public sale a portion of a *Zamíndári*, and *B* purchased another portion, besides the *Bankar* of the whole estate; it was held, that the *Bankar* purchase made by *B* conveyed to him a right over all the forest timber, though growing in the portion purchased by *A*, but that no right to the land on which the trees grew was conveyed by the sale of *Bankar:* that *A*, as purchaser of the soil, should enjoy its produce when cultivated; and that *B* should remain in undisturbed possession of the profits arising from the forests. By agreement of the parties, it was further ordered, that *B* should not obstruct *A* in clearing away the forest lands, but should possess the timber when felled; and that in the event of *A*'s wantonly cutting down any trees without being able afterwards to cultivate the land, he should make good to *B* whatever loss might be thereby sustained. *Byjnauth Mujmoodar* v. *Deen Dyal Gooput.* 22d Jan. 1814. 2 S. D. A. Rep. 105.—H. Colebrooke & Fombelle.

BANKERS' BOOKS.—See EVIDENCE, 128, 130, 131.

BANKRUPT.

1. A plea of a certificate under a commission of bankruptcy in England was held on demurrer to be no bar to an action of debt on bond in India. *Wilson* v. *Smith.* Hyde's Notes. 16th March 1785. Mor. 365.

2. And it was held to be no defence to an action for a debt on a bill of exchange incurred in India previously to such bankruptcy and certificate. *Richardson* v. *Betham.* 26th Nov. 1820. East's Notes. Case 89.

3. But these cases were afterwards overruled; and it was held by the Judicial Committee of the Privy Council, that a certificate of conformity, obtained under a commission of bankrupt in England, is a bar to an action for a debt contracted by the bankrupt at Calcutta previously to his bankruptcy, although the creditor had no notice of the commission, and was resident at Calcutta. *Edwards* v. *Ronald and others.* 5th March 1830. 1 Knapp, 259.

4. A deed of assignment executed for the benefit of the creditors generally, though made *pendente lite,* was held to be valid, and not affected by a judgment obtained two days afterwards. *Johnston* v. *Morris.* Hyde's Notes, Chamb. Notes, 23d July 1787. Mor. 357.

5. An assignment of all a trader's effects to a particular creditor for the payment of his claim first, and then for the benefit of the rest, was held not to be avoided by the 13th Eliz. c. 5. (though some of the creditors dissented, and the assignment would have been an act of bankruptcy in England), the assignment being open and *bonâ fide,* for an undoubted consideration. *Candler and another* v. *Morris.* Chamb. Notes, 11th Dec. 1787. Mor. 359.

6. It was established, that an assignment under a lawful adjudication of bankruptcy in the country where a

bankrupt is domiciled, binds his property and rights everywhere; and therefore property of a bankrupt in India would pass to the assignee in England.[1] *Wyatt* v. *Rooploll Mullick.* 5th Feb. 1834. Cl. R. 1834. 151. Mor. 367.

7. And that though the commission of bankruptcy and adjudication be fully proved, the validity of the adjudication, and consequently of the assignment, is triable in India. In an action brought by the assignee, the petitioning creditor's debt, the trading and act of bankruptcy, may be brought into question, notwithstanding the adjudication; and the commission is disregarded if it has issued on insufficient evidence. *Ib.*

8. The principle that one creditor shall not take a part of the fund which otherwise would have been available for the payment of all creditors, and at the same time be allowed to come in *pari passu* with the other creditors, for satisfaction out of the remainder of that fund, does not apply where that creditor obtains, by his diligence, something which did not, and could not, form a part of that fund. *Cockerell and others* v. *Dickens.* 24th Feb. 1840. 3 Moore, 98. 2 Moore Ind. App. 353.

8 *a.* The Orphan Chamber of Batavia being the executors of a foreign creditor in the Island of Java, by their agent in Calcutta proved the amount of their whole debt against the estate of *A* & Co., who had been declared insolvents under the Indian Insolvent Act, 9th Geo. IV. c. 73; and after making such proof, and receiving the dividends upon the whole debt, instituted a suit in the Island of Java, to recover a plantation or estate there held by one of the insolvents, as trustee for the firm of *A* & Co. and *B* in equal shares, to which suit the assignees of the insolvent appeared as defendants; but judgment was given in favour of the creditor, for the sale of the estate for his benefit, the proceeds of which amounted to three-fifths of his whole debt. The assignees of *A* & Co. filed a bill on the equity side of the Supreme Court at Calcutta against the agent of the foreign creditor, resident within the jurisdiction, praying that the dividends might be refunded, and that the defendants might be restrained, by injunction, from receiving any further dividends until all the other creditors were put on an equal footing with the creditor at Java. The defendant demurred, and obtained judgment against the assignees. It was held, on appeal, by the Judicial Committee, that the estate in Java, not passing to the assignees under the assignment, did not form any part of the fund that was available for the benefit of the several creditors, and that the creditor was therefore not bound to refund the dividends, nor ought to be prevented from receiving any future dividends, provided he did not receive more than twenty shillings in the pound upon his whole debt. But the bill having stated that the creditor had also instituted proceedings against certain debtors of the insolvents at Bencoolen, whose debts passed under the assignment; it was held, that the assignees were entitled, under the prayer for general relief, to an injunction to stay the receipt of further dividends until the proceedings at Bencoolen were abandoned. *Ib.*

9. *Assumpsit*, by the surviving assignee of a bankrupt, under an English commission, against a debtor, a native of India, and resident within the jurisdiction of the Supreme Court of Calcutta: plea that the defendant had not undertaken, or promised in the manner or form as the plaintiff, *assignee as aforesaid*, had complained against him. Two days after issue joined the defendant gave notice that he intended to dispute the trading, the petitioning creditor's debt, and bankruptcy. At the trial, copies of the

[1] This was affirmed on appeal by the Judicial Committee of the Privy Council *Clark* v. *Mullick*, 11th Dec. 1840. 3 Moore, 252. 2 Moore Ind. App. 263, the principle being allowed by their Lordships.

proceeding in the Bankruptcy Court, the commission, adjudication, and assignment to the plaintiff and his co-assignee, which purported to be certified by the Clerk of the enrolments, and to be under the seal of the Court of Bankruptcy in England, pursuant to the 2d and 3d Will. IV. c. 114. s. 9., were given in evidence, but no proof was given that these copies were authentic, nor was the seal proved to be that of the Court of Bankruptcy in England. A verdict was given for the plaintiff, liberty being reserved for the defendant to move for a nonsuit. A rule *nisi* was afterwards granted, and, after argument, made absolute, and the verdict set aside, and judgment of nonsuit entered for the defendant, on the ground that there was no evidence of an act of bankruptcy, of trading subsequent to the passing of the 6th Geo. IV. c. 16, and that neither that Act, nor the 2d and 3d Will. IV. c. 114. extended to India. It was held, on appeal, affirming the judgment of the Court below, 1st, That the plea of *non-assumpsit* put the bankruptcy and assignment at issue sufficiently without any notice; 2dly, That the form of the plea, "*Assignee as aforesaid*," was not an admission of the plaintiff's title as assignee of the bankrupt, but only used in reference to the description the plaintiff had given of himself in the declaration; 3dly, that the Statutes 6th Geo. IV. c. 16., and the 2d and 3d Will. IV. c. 114., made to facilitate the proof of bankruptcy and assignment in England, did not extend to the Courts of India; and that in these Courts such evidence of bankruptcy must be given as would have been required to prove the fact if no statutory regulations had been made.[1] *Clark* v. *Baboo Mullick*. 11th Dec. 1840. 3 Moore 252. 2 Moore Ind. App. 263.

[1] Grant, J., in delivering his judgment in the Supreme Court at Calcutta in this case, said, "But it is a different question whether, by the principles of international law, when we give effect to a contract or assignment made in a foreign country, according to the laws of that country, we are not bound to receive, as part of the law, upon which the existence and validity of such contract and assignment rests, the law of that foreign country, regarding the evidence by which that existence and validity might be there sufficiently proved. And therefore a question would arise, whether the statutes in question, though not binding here as laws, ought not to be received here as the *leges loci contractûs* to determine the evidence which is admissible to prove the assignment."

BASTARD.

I. Generally, 1.

II. Inheritance of Bastards.—See Inheritance, 44 *et seq.* 308.

III. Privilege of Bastards of Native Princes.—See Privilege, 2.

I. Generally.

1. A writ of *habeas corpus* will be granted to the mother of an illegitimate infant, to obtain possession of it, it being in the custody of its putative father, where there appear no circumstances to controul the right of custody. *The King* v. *Nagapen*. 3d May 1814. 2 Str. 253.

1 *a*. But it is in the discretion of the Supreme Court to *give* or *refuse* to its mother the possession of an illegitimate infant; and in the exercise of this discretion the interest and benefit of the child will be principally regarded. *Ex-parte Intiazzoon Nissa Begum*. 14th Sept. 1814. 2 Str. 271.

2. The fact of a father and mother of illegitimate children conveying each his and her own estate, by separate instruments, to trustees for the benefit of the children, will not (although the one was considered to be in consideration of the other) make such conveyances good against cre-

ditors or subsequent purchasers for a valuable consideration: still less if the deed of the natural and reputed father be stated to be made in consideration "of natural love and affection," and of a nominal sum of Rs. 5, not noticing the other conveyance, except by stating that his deed was by way of *part* provision for the children. *Rajnarain Ghose* v. *Reid and others.* 11th July 1820. East's Notes, Case 122.

3. *A* had four illegitimate children by *B*; *A* and *B* had joint possession of the children for many years, when, during the temporary absence of *A*, *B* carried away the children, with the intention of embarking for England. Held, that *A* had never lost the joint possession, because, during his absence from his own house, in which they were all residing, *B* herself had broken off the connexion, and made it impossible that the joint possession should continue, and the possession of the children was decreed to *A*. *Williams* v. *North.*[1] 7th Nov. 1822. Clarke's Notes, 103.

4. The Court refused to take three illegitimate children out of the custody of the father, and deliver them to their mother, on the ground of affidavits swearing that she was a prostitute, and given to intoxication. *In the matter of Harriet M'Nair.* 25th Jan. 1836. Clarke's Notes, 104.

5. The like order was made on the ground of incontinence of the mother, and former neglect of the child, who had been taken away from the house of its grandmother, where it had been left by the mother, who had gone up the country to cohabit with an indigo planter. *In the matter of the male child of Anne Rose.*[2] 20th June 1836. Clarke's Notes, 105.

[1] See the Calcutta Annual Register, 1822, p 103

[2] For a full report of this case see "The Englishman" Newspaper, 4th July 1836.

BAY BIL WAFÁ.—See APPEAL, 88; DEED, 10; MORTGAGE, 30 *et seq.*

BAY MOKASA.—See HUSBAND AND WIFE, 71.

BAY TALJIAH.—See SALE, 9, 10.

BAZÍ-ZAMÍN-DAFTAR.—See LAND TENURES, 6.

BENÁMI.

I. GENERALLY, 1.

II. BENÁMÍ SALES.—See SALE, 32 *et seq.*

III. INSTITUTION OF BEN'MÍ SUITS. —See ACTION, 16.

IV. FARZÍ GRANTS.—See FARZI, *passim.*

I. GENERALLY.

1. *Quære*, whether the Court will recognize a *Benámí* trustee. *Maha Ranee Bussunt Comaree* v. *Bullobdeb and another.* 22d July 1840. 1 Fulton 383.

2. In a *Benámí* transaction the party beneficially interested should sue in equity. *Ib.*

3. The person in whose name a *Benámí* conveyance stands, can maintain ejectment for the premises contained in such conveyance. *Doe dem. Degumber Dutt and others* v. *Cossinauth Shaw.* 13th April 1844. 1 Fulton, 452.

4. Semble, Even against the beneficial owner. *Ib.*

BENGAL BOND.—See BOND, 1.

BENGÁLÍ MORTGAGE.—See MORTGAGE, 18, 19, 41 *et seq.*

BILL.

I. BILL OF SALE.

1. *In the Supreme Courts*, 1.

2. *In the Courts of the Honourable Company*, 2*a*.

II. In Equity.—See Amendment, 3 *et seq.*—Practice, 115, 116. 144 *et seq.*

III. Bill of Costs.—See Attorney, 5 *et seq.*

IV. Bill of Lading.—See Ship, 6.

I. Bill of Sale.

1. *In the Supreme Courts.*

1. An Armenian heir-at-law is entitled to recover on his title by the British law. Therefore no bill of sale executed by him, when an infant, can bind or bar his title to recover real property when he comes of age. *Doe dem. Aratoon Gasper* v. *Puddolochum Doss.* 9th Nov. 1815. East's Notes. Case 36.

2. The bill of sale of the Sheriff conveys the land itself under an execution, and not merely the right and interest of the party. *Doe dem. Juggomohun Chatterjee* v. *Gooroopersaud Day.* 22d July 1819. East's Notes. Case 103.

II. In the Courts of the Honourable Company.

2*a*. A claim to recover a *Birt* tenure, on the plea that, as there was no specification thereof in the bill of sale, it was not included in the assets of an estate sold by order of the Supreme Court, was dismissed by the Sudder Dewanny Adawlut on the ground of the bill of sale plainly stating that all the lands, both *Khirâj* and *Lá-khirâj*, included in the said estate, together with all the right, title, and interest of the proprietor therein, were thereby conveyed to the purchasers. *Kishenmohun Bunhoojea and others* v. *Ramindur Deb Rai.* 17th Oct. 1816. 2 S. D. A. Rep. 197.—Ker & Oswald.

3. In the absence of a bill of sale for landed property, and a receipt for the purchase-money, the Court held it necessary that the fact of the sale should be satisfactorily established; and in the present instance, considering the proof adduced by the claimant (who was a servant of the alleged vendor, and probably in possession of his seals) to be insufficient to establish the sale, disallowed the claim. *Meerza Moohummud Ali* v. *Nuwab Soulut Jung.* 27th June 1826. 4 S. D. A. Rep. 168.—Leycester & Dorin.

4. *A* purchased a *Mootah* of *B*, and held possession till his death, when *B*, under colour of a bill of sale alleged to have been executed by *A* two days before his death, obtained possession. On a claim brought by the widow and heiress-at-law of *A*, for recovery of the *Mootah* and mesne profits, no sufficient proof of the execution of the bill of sale having been given, possession was adjudged to her with the mesne profits, from the period of her husband's death. *Sooriah Row* v. *Cotaghery Boochiah.* 17th Dec. 1838. 2 Moore Ind. App. 113.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

I. Muhammadan Law, 1.

II. In the Supreme Courts.

1. *Generally*, 5.
2. *Liability of the East-India Company.—See East-India Company*, 2 *et seq.*

III. In the Courts of the Honourable Company.

1. *Generally*, 7.
2. *Drawer and Indorser*, 10.
3. *Actions on*, 12.

I. Muhammadan Law.

1. By the Muhammadan law every bill of exchange imports a command to the drawee to pay; and his acceptance is not only an admission of

effects or money in his hands to pay, but also an undertaking by the acceptor, as well with respect to the drawer, as the payee, to pay the bill. *Agha Mohammed Mahadustee* v. *Sait Gopal Doss Mookoondoss.* Case 5 of 1805. 1 Mad. Dec. 1.—Lord W. Bentinck & Hurdis.

2. The drawer of a bill of exchange accepted by the drawee can only become responsible for payment thereof in one of two cases; viz. if he had entered into an agreement to pay, in the event of payment being refused by the acceptor, or if the acceptor had died insolvent. *Ib.*

3. By the custom of merchants, though the indorsee of a bill of exchange was dead at the time it was indorsed to him, his legal representatives are entitled to recover the amount. *Kurrimoollah Khan and others* v. *Hutton and others.* 8th July 1819. East's Notes. Case 101.

4. And the heirs of a Musulmán deceased may sue on a bill of exchange indorsed to him, though the deceased should have made a will appointing an executor, or gave verbal directions to others to collect his debts, &c., and pay over the amount to his widow. Such executor cannot sue in his own name, but an action may be brought by a creditor of the deceased. *Ib.*

II. In the Supreme Courts.

1. *Generally.*

5. Where the consideration of a promissory note was stated to be Rs. 1700, which, in fact, was only paid with government paper of that nominal value, but which was then at a considerable discount in the market, the Court only suffered the plaintiff to recover the amount *minus* the discount. *Gooroopersaud Bose* v. *Habberly.* 31st Mar. 1815. East's Notes. Case 32.

6. It was held, that a Hindú eldest son, the manager of the family, might, after his father's death, sue alone for a debt due on a promissory note to the father without joining an infant brother. *Govindchund Sein* v. *Simpson.* 20th April 1820. East's Notes. Case 119.

7. Where re-exchange is allowed, the rate of it must be the same as that at which private bills can be drawn. *Hastie* v. *Members of the Indemnity Insurance Office.* July 1843. 1 Fulton, 213.

III. In the Courts of the Honourable Company.

1. *Generally.*

8. In a suit to recover a debt on a promissory note, under seal, due to the appellants by the respondent's father (the respondent being his daughter and heiress), commenced more than twelve years after the debt was contracted, it was held, that the debt was not affected by the Statute of Limitations, Sec. 13. of Reg. I. of 1800[1], on the ground that, as the respondent had received credit within the twelve years from the appellants for a bill of exchange drawn upon them in her favour, by an Armenian merchant, the claim of the appellants became thereby cognizable, the credit given to the respondent for the bill of exchange being considered as an acknowledgment of the debt on her part. *Jacob Johannes* v. *Mukia Khatoon.* 27th Nov. 1815. 1 Borr. 253.—Sir E. Nepean & Bell.

9. Where the daughter and heiress of a person who gave a promissory note passed more than twelve years previously, but which she had afterwards acknowledged by allowing herself to be credited by the payees of the note for the amount of a bill of exchange drawn in her favour upon, and accepted by them, could not prove the payment of the note, she

[1] Rescinded by Reg 1 of 1827.

was directed to pay the amount due on it with interest equal to the principal, but deducting from that sum the amount credited to her on the bill of exchange. *Mukia Khatoon* v. *Gregory Johannes and another.* 12th May 1819. 1 Borr. 262.—Sir E. Nepean, Bell, Prendergast, & Warden.

10. *A*, by mistake, having sold to *B* a promissory note for Rs. 2000 instead of one for Rs. 500, sued him to recover the difference between the two notes. *B* having sent the note to *C*, his agent, pleaded ignorance of the mistake, and referred *A* to *C* for the difference. It being proved that *A* had no dealings with *C*, judgment was given against *B*, leaving him the option of suing *C* for the recovery of the difference. *Gour Sirdar* v. *Gossee Dutt.* 30th Nov. 1818. 2 S. D. A. Rep. 281.—Fendall & Oswald.

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2. *Drawer and Indorser.*

11. *A* gave a draft in favour of *B* upon *C*, who accepted it, and *B* indorsed it over to *D*, his creditor, who sued both *B* and *C*, and obtained judgment against them, jointly and severally, they being decreed to pay the balance sued for with costs and interest up to the date of the decision. *Bhugoo Bhaee Pranwulubh* v. *Kasee Bhaee Kuhandas.* 27th Aug. 1821. 2 Borr. 150.—Elphinston.

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3. *Actions on.*

12. Where the respondents claimed the amount of a bill of exchange, or *Khoondi*, given on credit to the appellant, the parties who granted the bill having given an acquittance on adjustment of accounts, and no collusion or unfairness in the transaction being shewn, judgment was given against the claim. *Jograj Sahoo* v. *Ramoo Sahoo and another.* 12th Sept 1805. 1 S. D. A. Rep. 104.—H. Colebrooke & Harington.

13. A bill broker is not liable for the amount of a bill of exchange procured by him in case of its being dishonoured, the loss in such case falling upon the principal who took it up. *Nurotum Sheolal* v. *Roostumjee Nureemanjee.* 12th March 1817. 1 Borr. 162. Sir E. Nepean, Nightingall, Brown, & Elphinston.

14. A merchant honouring the draft of a constituent in the amount of the drawer's credit in his books, by payment of that amount only, and no more, is not liable for the balance of the draft unpaid, to the person in whose favour it is drawn. *Girdhurlal Brijlal* v. *Mihirwanjee and another.* 19th July 1821. 2 Borr. 96.—Elphinston & Sutherland.

15. The sellers of a bill of exchange which was not discharged, though accepted by the drawee, were held to be responsible for the amount in the first instance, without reference to the acceptor.[1] *Ishree Pershad and another* v. *Hurbuns Lall and others.* 10th Dec. 1822. 3 S. D. A. Rep. 177.—Goad & Dorin.

16. It was held, that the seller of a bill of exchange is answerable for the amount in the first instance when not paid by the drawee; that his having lodged the amount of it in the hands of a banker, on account of the purchaser, without the purchaser's sanction, does not exonerate him; and that his not having received back the bill, or caused it to be cancelled, affords sufficient presumption, in the absence of proof to the contrary, that such sanction was not ob-

[1] The evidence in this case was extremely meagre. It did not appear whether the seller of the bill of exchange was the original drawer, or an intermediate indorser, or on what ground the drawees, after having accepted the bill, omitted to discharge the amount, whether from failure, or from having no assets belonging to the drawer. The only point of law established was, that the acceptance of a bill of exchange does not exonerate the seller of it from responsibility if the amount should not be discharged by the drawee. This, indeed, was the only point to be determined, as upon it alone the defendants relied for exemption from the claim.—Macn

tained. *Naroopa Naik and another* v. *Clark*. 24th July 1823. 3 S. D A. Rep. 248.—Shakespear.

17. It was held, that the negociator of a forged draft or bill of exchange, receiving the amount thereof, is liable to refund on a suit against him by the drawee; the payees named in the draft being unknown, and the forgery proved. *Mugneeram* v. *Gokul Das and another*. 11th Dec. 1827. 4 S. D. A. Rep. 290.—Sealy.

BIRMOOTER, OR BROMUTTER.—See LAND TENURES, 10, 11; SALE, 27.

BIRT IJÁRAH.—See LAND TENURES, 23.

BIRT MAHÁBRAHMANÍ.

1. According to the Hindú law, as current in Behár, the *Birt Mahábrahmaní*, or profits arising from sacrificial fees, cannot be transferred, as the fees which constitute the *Birt* are only fit to be received by the officiating priests to whom they are offered; and the purpose of the offerings, namely, the spiritual welfare of deceased ancestors, would be defeated by the alienation. *Nundram and others* v. *Kashee Pande and others*. 30th June 1823. 3 S. D. A. Rep. 232.—Leycester & Dorin.

2. Where *Birt Mahábrahmaní* is held in joint tenancy by several sharers, unless it be divided, no one of the sharers is at liberty to alienate his share without permission of the other sharers. *Nundram and others* v. *Kashee Pande and others*. 30th June 1825. 4 S. D. A. Rep. 70.—Harington & Martin.

3. Semble, that if several sharers have possession of *Birt Mahábrahmaní*, and the *Párehs*, or divisions into days, are fixed, the interest of the sharers of each *Páreh* is distinct and separate, so far as relates to the sharers in the remaining *Párehs*; but so far as relates to the interests of the sharers in each individual *Páreh*, that individual *Páreh* is held to be joint and undivided. *Ib.*

BOND.

I. IN THE SUPREME COURTS.
1. *Nature and Validity*, 1.
2. *Liability of Obligor*, 5.
3. *Proceedings on Bond*, 7.

II. IN THE COURTS OF THE HONOURABLE COMPANY.
1. *Nature and Validity*, 9.
2. *Construction and Operation*, 12.
3. *Liability of Obligor*, 19.
4. *Proceedings on Bond*, 30.
5. *Interest on Bonds.—See* INTEREST, 23*a et seq.*
6. *Evidence respecting Bonds.—See* EVIDENCE, 91. 108, 109. 122. 126. 137. 143. 146. 162.

I. IN THE SUPREME COURTS.

1. *Nature and Validity.*

1. Bengal bonds are simple contracts and not specialties. The interest agreed upon, even though more than 12 per cent., will be allowed where the Stat. 13th Geo. III. c. 63. does not apply. *Weston and another* v. *Chaundraney*. Hyde's Notes. 23d Jan. 1778. Mor. 231.

2. A bond for the performance of an agreement affecting the exclusive trade granted to the East-India Company was held to be void under the Stat. 7th Geo. I. c. 21. s. 2. & 21st Geo. III. c. 65. ss. 22 & 30. *Horsley* v. *Perreau and another*. Chamb. Notes. 12th July 1791. Mor. 362.

3. A bond given for a corrupt consideration will be cancelled. *Park* v. *Mootiah*. 30th April 1799. 1 Str. 3.

4. A bond for appearance taken by the Board of Revenue, applicable to a variety of matters, of the greater

part of which the Board had not cognizance, and of which, with respect to some, the complainant had been found entitled to relief, was declared void, and decreed by the Court to be delivered up and cancelled. *Vencata Runga Pillay* v. *The East-India Company.* 26th Sept. 1803. 1 Str. 174.

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2. *Liability of Obligor.*

5. A Hindú is of full age at sixteen years to bind himself by executing a bond. *Nocoor Bysach* v. *Gopalchund Seat.* Chamb. Notes. 21st Nov. 1788. Mor. 82.

6. The obligor coming into Court with unclean hands, the costs will not be allowed. *Vencata Runga Pillay* v. *The East-India Company.* 26th Sept. 1803. 1 Str. 174.

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3. *Proceedings on Bond.*

7. The prothonotary is authorised by the Court to sign judgment in all cases where a *plene administravit* or *plene administravit præter* is pleaded alone, and admitted by the replication in actions of debt on bond. *Barretto* v. *Inglis.* 28th June 1811. Cl. R. 1829. 222. *Fulton* v. *Inglis. Ib. Mackintosh* v. *Inglis. Ib.*

8. Where a bond is payable by instalments, breaches need not be stated on the record before issuing the *fieri facias*, if judgment has been confessed under a warrant of attorney. *M'Carthy* v. *Harrison.* 4th Term 1814. Cl. Ad. R. 1829. 33.

II. In the Courts of the Honourable Company.

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1. *Nature and Validity.*

9. A bond taken from the respondent, a landholder in Zillah Ramghur, was pronounced null and void, as being indirectly in favour of the *Díwán* to the Collector of the Zillah, in opposition to Sec. 2 of Reg XIX. of 1793, and also as having been obtained by undue influence. *Manikchund Bunoja* v. *Raja Gooroonaraen.* 19th Sept. 1806. 1 S. D. A. Rep. 165.—Harington & Fombelle.

10. Where it appeared by the evidence that the defendant was induced, by threats of violence, to execute a bond, and the plaintiff failed to establish that any consideration was given for it, judgment was given in favour of the plaintiff, the defendant paying all costs of suit. *Venkiah* v. *Vencatarauze.* Case 12 of 1807. 1 Mad. Dec. 24.—Scott, Greenway, & Stratton.

11. A bond not being witnessed, and there being no evidence whatever to prove that it was in the handwriting of the obligor, or that the sum mentioned therein had been received by him; and its execution being, moreover, expressly denied by the heirs of the obligor (the original defendants); the instrument was declared to be invalid, and the Court adjudged the respondents to pay all costs. *Vencata Rama Iyen and others* v. *Vencata Narnapah Chitty and another.* Case 11 of 1813. 1 Mad. Dec. 76.—Scott & Greenway.

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2. *Construction and Operation.*

12. A bond having been executed by *A*, and the amount secured by a mortgage of certain villages to *B*, and such bond subsequently coming into the possession of *C* (by an alleged assignment), who sued *A* for the amount secured and interest, the Court observed that the bond bore no endorsement indicative of the transfer of the property to *C*, nor was there any evidence to that effect; and his claim was dismissed, notwithstanding that *C* had received a monthly stipend from *A*, his relative, which the Court held could not be taken as evidence in favour of the claim, the amount being disproportionate to the rate of interest stipulated in the bond, but could merely be considered as an allowance to a poor relation. *Cavoo Boyee* v. *The Jagheerdar of Arnee.* Case 3 of 1810. 1 Mad. Dec. 34.—Scott & Greenway.

13. Where a bond was executed before the 1st of Jan. 1804, bearing interest at the rate of 12 per cent. per annum, and subsequently to that period a second bond (the first remaining uncancelled) for the same debt at a higher rate; it was held, that, agreeably to Reg. XXXIV. of 1803, the legal interest was not thereby forfeited. *Jeetun Das* v. *Lal Roodur Purtab Singh.* 18th June 1821. 3 S. D. A. Rep. 96.—Goad.

14. A claim to recover a debt on bond was rejected, it appearing that the stamped paper on which the bond was executed in the year 1813 was of the kind prescribed for use by Reg. VI. of 1797, which had been altered, by order of the Board of Revenue, in 1801.[1] *Bhugoo Sing* v. *Doonda Sing.* 5th April 1824. 3 S. D. A. Rep. 328.—C. Smith & Ahmuty.

15. Where a bond was written on the adjustment of accounts between the parties, a previous bond having been cancelled, and the aggregate amount of the principal, and the legal interest remaining due upon the adjustment consolidated into principal money; it was held that the passing such new bond, after such adjustment, barred all retrospective inquiry, and it was decided to be a valid and just document, and the full amount, with interest, recoverable, under the provisions of Sec. 5. of Reg. I. of 1814.[2] *Ramchunder Unoopram* v. *Bhugwan Mansing.* 18th Nov. 1824. Sel. Rep. 12.—Romer, Ironside, & Kentish.

16. Where *A* brought an action against *B* to recover on a *Samedast-khatt* a sum of money, from some land of which *A* held the title-deeds in deposit, the sum was decreed in *A*'s favour, to be recovered from *B* personally, and not from the land, as it did not appear, from the terms of the bond, that *A* had any right to recover from the *land*, but, on the contrary, from the *person* of *B*; and that, as the deeds had been deposited merely as an assurance, and not as a security, they could not be considered to tie up the land as in mortgage, and must be returned whenever *B* chose to ask for them. *Muncharambhaee Jugjeewundass* v. *Moola Kutboodeen Hussain and another.* 26th Sept. 1838. Sel. Rep. 139.—Greenhill.

17. *Quære.* Whether a *Samedast-khatt*, which is in the nature of a bond, is valid if written on unstamped paper? *Ib.*

18. In the case of a bond or other instrument for the payment of money, the origin of the cause of action is to be reckoned from the date of the money becoming payable.[3] *Gunga Sahoo* v. *Bhookim Misser.* 23d Mar. 1842. 7 S. D. A. Rep. 77.—Tucker & Reid.

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3. *Liability of Obligor.*

19. Where *A* claimed from *B* the principal and interest of a bond debt paid by *A*'s ancestor as surety for the ancestor of *B*, judgment was given for the balance of the principal proved to be remaining unpaid; but the interest was declared to be forfeited in consequence of being stipulated at more than the legal rate. *Rai Balgovind* v. *Sheikh Gholam Ali.* 24th June 1805. 1 S. D. A. Rep. 93.—H. Colebrooke & Fombelle.

20. *A* instituted a suit against *B* for the recovery of the principal and interest due on a bond. *B* admitted the bond, but put in a paper purporting to be an acquittance for the sum

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[1] It may here be observed, that the decision of the Superior Court might have been different had the debt been clearly proved to have been due. The informality of the instrument had doubtless great weight in influencing the ultimate decree; but the second Judge rested his opinion mainly on the facts of the case, as they appeared in evidence, and was guided at least as much by equitable as by strictly legal and technical considerations. The Regulation referred to in this case was rescinded by Sec. 2 of Reg. I. of 1814, and Sec. 2 of Reg. XXIII. of 1814.

[2] Rescinded by Reg. I. of 1827.

[3] See Construction, 196.

in question. The Court, taking into consideration that the validity of the acquittance had been brought in issue before the Court of Circuit, when *B* had been accused of fabricating the instrument, but had been acquitted, declared it to be valid, as, by the evidence taken on the trial above referred to, the prosecutor had failed to prove the forgery; and the further evidence subsequently produced in the Civil Court to this point was equally unsatisfactory. *Talloory Javiharandoo* v. *Vassereddy Vencatadry Naid.* Case 7 of 1811. 1 Mad. Dec. 41.—Scott & Greenway.

21. *A* sold to *C*, for a certain sum of money, a bond, bearing interest, purporting to be executed by *B*, a *Zamíndár*, to *A*, and also a deed, likewise alleged to be executed by *B*, by which the latter agreed to grant certain lands to *A*, on the occurrence of a contingency. *C* sued *B* for the recovery of the principal sum and interest, and the possession of the lands, the contingency having happened. *B* resisted the claim, on the ground that the instruments in question were fraudulent fabrications of *A*. *B*'s signature and seal being admitted by him to be genuine, and as having been affixed by him to a blank bond which he gave to *A*, the Court, confirming the decrees of the Lower Courts, awarded to *C* the principal and interest due on the bond, together with the costs of suit; but with regard to the land, the claim of *C* was dismissed, as the grant agreed upon between *A* and *B* was contrary to the Regulations. *Rajah Vencata Permal Rauze* v. *Abbot and another.* Case 16 of 1812. 1 Mad. Dec. 66.—Scott, Greenway, & Stratton.

22. *A* claimed from *B* a sum of money, due on a bond executed to him by *C*, for which *B* was alleged to have made himself responsible. It appeared that there was no evidence to prove that *B* was justly responsible for the payment, for though *B* had agreed to discharge the amount, this promise was coupled with certain conditions, with which *A* refused to comply, and the nature of which would seem to shew that *B*, so far from agreeing to pay the amount as a debt justly due by him, consented to pay it partly as a means of freeing himself from the importunities of *A*, and partly as the price of certain papers which, in a moment of confidence, he had entrusted to *A*, and which he was apprehensive *A* would use, or had used to his prejudice. Held, therefore, that *A* had failed, under the circumstances, to substantiate his claim, and he was ordered to pay all costs. *Nuwab Roostoom Jah* v. *Meerza Abd-ool-Wahab.* Case 19 of 1814. 1 Mad. Dec. 107.—Scott & Greenway.

23. *A* claimed a sum of money due on a bond executed to him by *B*; but it appearing that no consideration had ever been given for the bond, which had been executed with a fraudulent intention, merely to make it appear before the Collector that *A* had become the creditor of *B* for the purpose of undertaking the rent of a certain district which the *Zamíndár* wished to resume, and that he had received at the time a counter document from *A*, which he produced; the Court, in deciding against the claim of *A*, animadverted upon the disgraceful grounds on which *B* had resisted the claim. *Nawab Roostoom Jah* v. *Meerza Abd-ool-Wahab.* Case 20 of 1814. 1 Mad. Dec. 112.—Scott & Greenway.

24. Where the principal of a banking house sued to recover a sum of money lent from the funds of the house on a bond executed in favour of the head *Gumáshtah*, the claim was adjudged. *Mt. Seetul Bhao* v. *Emaum Khan and another.* 28th Feb. 1818. 2 S. D. A. Rep. 253.—Fendall & Oswald.

25. *A* lent a sum of money on bond to *B*, payable in two months, with 1 per cent. per mensem interest; and also two other sums of money on bonds to *C*, with the like interest,

and the principal to be payable on demand. *D* became surety for the three bonds, and executed deeds accordingly. *B* and *C* failed to pay their bond debts, and *D* refused to fulfil his engagement of responsibility. It appeared, on evidence, that *C* had acted as the *Gumáshtah* of *D*: and that the latter had, moreover, executed a *Karárnámeh*, by which he became surety for the two bonds of *C*. It was held, that though, according to the Muhammadan law, *A* could not recover under the security deeds, either originally or finally; yet as the *Karárnámeh* clearly shewed that *D* looked upon himself as responsible for the bonds of *C*, no question to the law officer was necessary regarding security; and *D* was accordingly decreed to pay the same, with interest from the date of the decree of the Lower Court at the rate of 1 per cent. per mensem. *Nabob Roostoomjah Bahauder* v. *Aga Mahummud Ebrahim*. Case 10 of 1818. 1 Mad. Dec. 207.—Harris & Cherry.

26. Where the obligor in a bond refused payment on the ground that the dates of the bond were inaccurate, and that the document was a forgery, and failed to prove such to be the case, the Court gave judgment that he should pay its amount, with interest up to the day of payment, and costs. *Sheodas Kishundas* v. *Jugjeevun Nundram*. 20th June 1820. 2 Borr. 99.—Romer & Ironside.

27. Where a suit was instituted against the head partner in a firm for the recovery of the amount of a bond in the name of the firm itself; under the circumstances, the debt being found to be just, the Court gave a decree against the firm; but remarked, that as the bond was in the name of the firm, which was not bankrupt, the action should have been entered in the name of it, and not in that of the head partner; and that the Court below should have dismissed the case, leaving the complainants to their fresh action against the firm. *Damodhur Bindrabin* v. *Moolchund Govurdhun*. 11th March 1822. 2 Borr. 207.—Sutherland.

28. Where the heirs of a Hindú, deceased, refused payment of a bond contracted by his widow (also dead), it being proved that part of the amount was expended by the widow in payment of her husband's debts, it was held that the heirs were liable for so much of the amount as had been so laid out, but that the widow could not saddle the estate, or heirs, with unnecessary burthens. *Umrootram Byragee* v. *Narayundas Ruseekdas*. 9th April 1822. 2 Borr. 201.—Romer.

29. Where, in a claim for the recovery of a sum of money on a bond, it appeared that the bond had been given in lieu of principal and interest due on two former bonds, which were executed in favour of the plaintiff while he was acting as *Mukhtár* and guardian of the parties bound by them, and the third bond being also executed under similar circumstances, the Court rejected the claim. *Baboo Ram Ghose* v. *Kalee Pershad Ghose and another*. 9th Feb. 1825. 4 S. D. A. Rep. 17.—C. Smith.

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4. *Proceedings on Bond.*

30. *A* executed a security bond to *B*, agreeing to pay, within a month from its date, the amount of a decree then already passed against *B*'s debtor. The Court of Appeal ruled that *B* must recover by action at law, because the term specified in the security bond had long expired. *B* sued, proved the bond, and got a decree for the principal; but the Court would not allow interest on the amount, as, if *B* incurred any loss by this, it was his own fault, for the intervening period during which he had been kept out of his property had elapsed from his own negligence in not suing either the principal or his security. *Dada Bhaee Suhoorabjee* v. *Dhoolubh Deochund*. 30th Aug. 1821. 2 Borr. 119. — Elphinston, Sutherland, & Ironside.

31. A person bringing an action against one of four parties, who passed a bond to him, instead of against all, was nonsuited, leave being reserved to him to sue them all in a fresh action. *Mooljee Kameshwur* v. *Bhugwandas Wullubhdas.* 14th Aug. 1823. 2 Borr. 595.—Romer, Sutherland, & Ironside.

BOUNDARY.—See ACTION, 31; ARBITRATION, 10; JURISDICTION, 260; EVIDENCE, 139.

BREACH OF TRUST.—See CRIMINAL LAW, 456, 572, 575.

BRAHMACHARÍ.—See INHERITANCE, 195.

BRITISH SUBJECT.[1]

I. WHAT CONSTITUTES A BRITISH SUBJECT, 1.

II. JURISDICTION AS TO BRITISH SUBJECTS. — See JURISDICTION, 100 *et seq.*

III. RIGHT TO THE BENEFIT OF THE ENGLISH LAW. — See PRACTICE, 19, 22.

I. WHAT CONSTITUTES A BRITISH SUBJECT.

1. A native Christian, born of a native Musulmán woman, and the illegitimate son of a British father, is not a British subject within the meaning of the term as used in the Charter and in the various Acts of Parliament. *Byjenaut Sing* v. *Reed and others.* 21st June 1821. East's Notes, Case 26.

2. Semble, Hindús, &c. born within the limits of Calcutta, though resident out of it, are British subjects. *Assignees of Boyd* v. *Maurel.* 14th June 1844. 1 Fulton, 455.

3. A person does not become a British subject, within the terms of the Charter, who becomes such by conquest merely, and has no rights of a natural-born subject. *Ib.*

BROKER.—See AGENT AND PRINCIPAL, 16, 17; BILLS AND NOTES, 13; CONTRACT, 8, 9.

BROKERAGE.

1. Brokerage was held to be a remuneration for personal service, which ought to have been paid at the time

[1] Mr. L Clarke, in a note to his Edition of the 9th Geo. IV. c. 33. (page 111), says: "According to one opinion, all persons born within the Company's territories are British subjects. This opinion is founded on the supposition that these territories are British Colonies, and stand in the same situation as the Island of Bombay, the Canadas, the Cape of Good Hope, or any other Colony which has been acquired by conquest or ceded by treaty. According to another opinion, those persons only are British subjects who are natives, or the legitimate descendants of natives of the United Kingdom, or the Colonies, which are admitted to be annexed to the Crown. A third opinion considers Christianity to be a test of an individual being a British subject, provided that the person was born in the Company's territories, and according to this an Armenian, or the illegitimate offspring (being a Christian) of English and native parents, would be a British subject. Nothing positive can be gathered from any of the Acts of Parliament, excepting that the 9th Geo. IV. c. 33. appears to negative the position that Muhammadans and Hindús are British subjects, and the Jury Act, 7th Geo. IV. c. 37, seems to be equally opposed to any persons being British subjects but natives, or the legitimate descendants of natives of the United Kingdom or its acknowledged Colonies." There is no doubt but that, under the 9th Geo. IV. c. 33, Muhammadans and Hindús are not British subjects. See, relative to the words "British subjects," the Fifth Appendix to the Third Report from the Select Committee of the House of Commons in 1831, pp. 1114. 1142. 1146 *et seq.* 1168. 1178. 1229. 4to. Edit.; and see, also, Sir E. H. East's Notes, Case XXVI., in the Second Volume of this work, where the meaning of the words is ably discussed

such service was performed, or, on failure, demanded through some judicial proceeding; and where the debt for brokerage had been allowed to lie over for a considerable term, a claim for interest was disallowed, as contrary to the equity which should govern the settlement of a claim for remuneration on account of personal services. *Mihirwanjee* v. *Wulubhdas Hureedas.* 23d May 1822. 2 Borr. 240.—Romer, Sutherland, & Ironside.

BUNDOBAST. — See CAST, 1, 12. 20.

BUNKUR.—See BANKAR.

BURGLARY. — See CRIMINAL LAW, 80 *et seq.*

BURRA THAKOOR. — See INHERITANCE, 209.

BYE MOKASA. — See HUSBAND AND WIFE, 71.

BYE-BIL-WAFÁ. — See DEED, 10; MORTGAGE, 30 *et seq.*

BYE-LAWS.—See CAST, *passim.*

BYE TULJEEH.—See SALE, 9, 10.

CAPIAS.—See ARREST, 5; CONTEMPT, *passim.*

CAPIAS AD SATISFACIENDUM.—See EXECUTION, *passim.*

CAST.[1]

I. LOSS OF CAST, 1.
II. LAWS AND PRIVILEGES, 16.

I. LOSS OF CAST.

1. Where a Cast (Ahmadábádí Bísa Khandaita Banyans) had drawn up and signed a *Bandobast*, or set of bye-laws, registered in the Adawlut, and one of the members who had not signed the *Bandobast* acted in contradiction to the provisions contained in it, he was temporarily excommunicated by the Cast; and on suing for damages was recommended by the Court to sign the *Bandobast*, in token of consenting to abide by it. This he agreed to do; and the Court decided that, on his signing, he should be restored within one month to his full privileges, or that the other members of the Cast, who then agreed to this arrangement, should pay the damages sued for, for his loss of Cast. *Shumbhoodas Ikaee-*

[1] Originally there were but four Casts; viz. the Brahman, the Kshatriya, the Vaisya, and the Súdra; the Kshatriya, and the Vaisya, and perhaps even the Súdra, are alleged by the Brahmans to be extinct. At the present day these are replaced by a multitude of mixed Casts, who maintain their divisions with great strictness, and abide by certain laws and regulations fixed by themselves. These mixed Casts, in many cases, coincide with trades which, in all towns, are held together as *Jamaát*, or companies, under hereditary chiefs, who, with a Council, or *Panchayit*, settle all disputes among themselves, including those of Cast: this, however, appears to apply to trades carried on in a common locality, and it does not follow that a goldsmith of one city would acknowledge common Cast with a goldsmith of any other. Under these circumstances I have arranged all the cases which relate to Cast and manufacturing companies, or crafts, under the head of Cast, though it must not be inferred that the terms Cast and *Jamaát* are synonymous, but merely that community of Cast and community of occupation generally go together: it is even a possible case that all the members of a *Jamaát* might not be exactly of the same Cast.

chund v. *Dhoolubh Poorshotum and others.* 1st Sept. 1808. 1 Borr. 347.—Grant & Smith.

2. A member of a Cast (goldsmiths) being publicly accused by another of having forfeited his right of eating with the Cast, it was held that the Cast, as a body, were justified in avoiding communication with him until he should have cleared himself from the charge, and that the members, as a body, could not be considered responsible to him. The Court, however, decreed that he might file his action for defamation against his accuser. *Bhugwan Koober* v. *Hansjee Nattra and others.* 9th Jan. 1811. 1 Borr. 363.—Crow & Day.

3. The husband of a woman having accused her of a criminal intercourse with a Pársí, she and her mother, a widow, who lived with her, were avoided by the Cast (the Morh Brahmans), and the widow instituted a suit for damages for expulsion from Cast. The Court held, that although the fact of adultery had not been proved, considerable suspicion attached to the daughter; and as the very suspicion of a Brahmaní woman in such a case was naturally revolting to Brahmans, the Cast were justified in avoiding intercourse with her and her family; and that her remedy lay in an action against her husband, by which her guilt or innocence might be determined. *Deokoonwur* v. *Ichharam and another.* 14th Aug. 1811. 1 Borr. 368.—Crow & Day.

4. Accordingly, the widow instituted a suit against the husband, who retracted his accusation, but it being proved, by the acknowledgment of the wife, that she had been guilty of conduct sufficient to justify her expulsion from the Cast, and it being clear that the husband was lying, in order to get himself and family re-admitted, the suit was dismissed under the circumstances. *Deokoonwur* v. *Umbaram Lala.* 14th Aug. 1811. 1 Borr. 370.—Crow, Day, & Romer.

5. Absolution of an excommunicated member of a Cast (Bhatiya Lohana) by a person claiming to be *Seth*, was set aside on proof that the *Setheea*-ship did not vest in him, and his authority was therefore not sufficient to annul the act of excommunication. *Lalsoondur and others* v. *Sumbhoo Narayundas Seth and others.* 5th Sept. 1811. 1 Borr. 378.—Crow & Romer.

6. Held, on a reference to the whole Cast, that damages could not be recovered where the whole Cast concurred in the expulsion of a member; and the Court decreed that the members of a Cast possess the right of expelling a member, except where it is done from purely malicious motives. And the respondent was ordered to refund sums of money received in damages and costs in the Lower Courts, and referred to his Cast under an award given by the heads of the Cast at Ahmadábád, to whom the Court had referred the final decision of the respondent's claim. *Khooshalchund Goolabchund* v. *Hurruckchund Moteechund.* 4th Nov. 1811. 1 Borr. 38.—Brown, Abercrombie, & Elphinston.

6 *a*. A Rajpoot brought an action for damages for expulsion from Cast for not performing his aunt's funeral ceremonies; and it was decreed that he should be re-admitted into the Cast when he had performed the ceremonies, but not before. *Ghelajee Nana Bhaee* v. *Umr Singh and others.* 19th Feb. 1812. 1 Borr. 389.—Crow & Day.

7. In the Lohar Cast it is the custom to allow a man to marry a second wife, when the first has reached her fortieth year without bearing children, but only with the first wife's consent; and a man marrying a second wife, against the wishes of the first, was expelled from the Cast, and the expulsion was confirmed by the Court. *Rugoonath Jetha* v. *Poorshootum Sunkur and others.* 6th Feb. 1813. 1 Borr. 398.—Crow & Day.

8. A Hindú cohabiting with a Muhammadan woman was held to be subject to the penalty of irrevocable expulsion from his Cast, and by such

expulsion to lose his right to hereditary succession. *Sheonauth Rai* v. *Mt. Dayamyee Chowdrain.* 17th March 1814. 2 S. D. A. Rep. 108. —Rees.

9. A woman introduced by marriage to the Cast (Srímalí Brahmans), and admitted, when she was, in fact, of an inferior Cast, was held to be liable to expulsion from the Cast; but as she had lived five years as a member of the Cast, and had been put to the expense of giving them two dinners for admission, the Court granted the damages she sued for on account of expulsion; her claim for re-admission was, however, disallowed. *Nhanee* v. *Hureeram Dhoolubh and the Cast of Sreemalee Brahmans.* 20th May 1814. 1 Borr. 84.—Duncan.

10. Certain parties suing for damages for expulsion from their Cast (Koondeegur) were nonsuited on proof that they had not conformed to the custom of the trade, by paying certain admission-fees, and that, therefore, they had never been regularly admitted as members of the *Jamaát*. *Bunmalee Sheolal and others* v. *Bhika Venee and others.* 4th March 1819. 1 Borr. 420.—Romer & Sutherland.

11. A Hindú sued certain members of his Cast (Banyans) for damages for expulsion from the Cast, caused by their having spread a report that he had had connection with a low Cast woman. Damages were given in his favour on proof of the report having been spread abroad by them as alleged, and none being produced in defence of its being true. In this suit, it not being against the whole Cast, the party complaining was left to the remedy of a fresh action against the whole Cast if they still refused to admit him. *Kuhandas Soorchund and others* v. *Hemchund Huruhchund.* 15th May 1821. 2 Borr. 108.—Romer.

12. Where a person had signed a *Bandobast*, and had afterwards refused to abide by it, his expulsion from the Cast was held to be lawful. *Bhaeechund Bhikaree* v. *Prumanund Madhow and others.* 27th Feb. 1823. 2 Borr. 434.—Romer & Sutherland.

13. Where a person was expelled from his Cast for eating with a person of a lower Cast, and the fact was proved in evidence, his expulsion was confirmed by the Court until he should perform certain penances required by the Cast rules. *Meetha Kuchara* v. *Bhana Mungul and others.* 11th March 1823. 2 Borr. 473.—Romer.

14. Where *A*, a member of a Cast (Ahmadábádí Bísa Srímalí Banyans) sued for damages for expulsion; it appeared, on evidence, that he and his family for three generations had adopted the tenets of a certain sect of the Cast (Dhundías) without relinquishing the tenets of the sect (Tappas) which all the members of the section of the Cast to which he belonged professed, and that he and his family had at all times frequented the temples of both sects of the Cast; the other members asserted their ignorance of his profession of the Dhundía tenets, and that, on discovering the fact, they had expelled him; as although, at some places, Dhundías were admitted to all rights of Cast by the Tappas, it was not the case in their city, where there were no Dhundías. Under the circumstances, the Court held, that, notwithstanding the improbability of such alleged ignorance, and since neither he nor his ancestors had ever openly avowed their tenets, and as none of their section of the Cast professed such tenets, the Cast should not be compelled to re-admit *A* to the rights of Cast; but that such members as chose were at liberty to do so, and that the Cast should not molest members so acting; nor should *A* have any claim for damages against members refusing him the rights of Cast. At the same time, it was held, that if *A* should at any time relinquish the Dhundía tenets, and adhere to those of the Tappa only, then he and his family should be admitted to the full rights of the Cast, and be entitled to sue for damages for any

neglect towards him from the Cast, or any individual member of it. *Punjee Phoolchund* v. *Raeechund Roopchund and others.* 14th Aug. 1823. 2 Borr. 598.—Romer, Sutherland, & Ironside.

15. Where a member of a Cast (Kherawal Brahmans) sued for damages for expulsion, no act of expulsion was proved; and the Cast declaring that they had no objection to eat with him, provided he complied with the custom of the Cast by paying certain fees, their justification was held good. *Jaeeshunkur Bhuwaneeshunkur* v. *Balkrishnu Lukmeedut and others.* 30th March 1824. 2 Borr. 685.—Romer.

II. Laws and Privileges.

16. Damages were recovered against the superintendent of a Hindú feast for having wantonly and maliciously caused the loss of the plaintiff's character by omitting to invite him to such feast, which was a solemn feast of the Cast; but it was held, that the amount of damages for such loss of Cast must be fully proved, and that no more than the actual damages incurred should be recovered. *Dhurmchund Abeela* v. *Nana-Bhaee Goolalchund.* 9th March 1809. 1 Borr. 11.—Duncan, Lechmere, & Rickards.

16 *a*. The *Jamaát* of silk-spinners filed a suit against a party for carrying on the business without paying the established fees. He, however, defended himself by saying that his grandfather had worked at the trade many years ago, and that he himself had obtained permission to resume the occupation of his forefathers from the *Pátels* of the *Jamaát*, who had the power to admit him into the trade. He also produced the old *Jamaát* accounts in which his grandfather's name was inserted as one of the *Jamaát*. The objections of the *Jamaát* were declared to be groundless and vexatious, and their suit was dismissed. *Pitambur Munohur and others* v. *Amichund Jugjeevun.* 12th Aug. 1809. 1 Borr. 356.—Grant & J. Smith.

16 *b*. A tradesman being accused by two companies (gold-wire drawers and gold-thread makers) of working at their trades conjointly, the companies respectively instituting suits against him to make him relinquish their trades, it was urged, in defence, that he only practised one trade, but admitted that the other was carried on in the same house by his brother and a partner. The Court held, that the two companies rising against him was corroborative of his not fairly observing the rules of trade; and though it was a common and allowable practice for two brothers, united in interests, to follow two distinct trades; yet as the trades in the present case were closely connected, and the two brothers, by each following one of these trades in the same house, could play into each other's hands, in a manner contrary to the meaning and spirit of the Rules of the two *Pancháyits*, the Court directed that the two brothers should be confined to one of the trades, so long as they should continue to live in the same house, making their own election. *Kulyanjee Narayunjee* v. *Huree Bhaee Poonjiya Mookadum and others.* 13th June 1811. 1 Borr. 365.—Crow & Day.

16 *c*. Where a *Firókhtiyah*, or retail dealer in grain, sued the company of *Maparas*, or wholesale dealers, to obtain the rights of the company, on the ground that his father was a *Mapara*, and that he himself, though he had been for a short time a *Firókhtiyah*, wished to resume his father's wholesale trade; the Court held, on evidence, that the father was never regularly a *Mapara*, and that the claim of the applicant was groundless, the Collector having reported that none of his family had ever been in the *Pancháyit* of *Maparas*, or ever paid any part of the yearly *Nazrúnch* to Government. *Khooshal Motee* v. *Venedas Seth and others.* 17th Aug. 1811. 2 Borr. 538.—Crow, Day, & Romer.

16 *d.* Where certain members of a trade (Kunbísarí, weavers) admitted the validity of claims made against the whole body of the trade who disputed them, they, as consenting to the claims, were held to be the only parties responsible, and the remaining members of the Cast exonerated. *Joga Lukmeedas and others* v. *Lala Joita.* 9th Dec. 1811. 1 Borr. 390. —Crow & Day.

17. Where certain members of a Cast (Srímalí Ahmadábádí) instituted a suit to oblige the others to conform to certain bye-laws; the Court took the vote of each individual member of the Cast, and finding the majority hostile to the Regulations, dismissed the suit. *Mootee Tapeedas and others* v. *Kuhandas and others.* 14th Feb. 1814. 1 Borr. 108.—Sir E. Nepean, Brown, & Elphinston.

18. Where the defendant touched a Súdra woman in public, in order to point her out to a Peon, so that the latter might serve her with a summons to appear at the police, such action was held to be lawful, the defendant being of a superior Cast, and it seems would have been so held had it been otherwise, the occasion appearing to the Court to be lawful. *Gobee Dossee* v. *Gungaram Day.* 27th Nov. 1820. East's Notes. Case 23.

19. Where a man sued a member of a Cast (Sutars) for damages for loss of character, by such member's refusing him the use of the Cast cooking pots; the suit was dismissed for want of proof of the injury, the law officer affirming that he would not be endangered, either in credit or property, by the act complained of, and for want of proof that the pots were refused by the body of the Cast. The Court added, that his remedy lay with the *Pancháyit,* which had full power to correct any matter of this description. *Bhugwan Meetha* v. *Kasheeram Govurdhun.* 17th June 1822. 2 Borr. 323.—Sutherland.

20. A Cast may lawfully execute a *Bandobast* among themselves, without the consent, or against the will, of one member, and that one member cannot break it, whether he have previously agreed to it or not; and they have the power of fining a person for breach of its terms as provided for in it. *Bhaeechund Bhikaree* v. *Prumanund Madhow and others.* 27th Feb. 1823. 2 Borr. 434.—Romer & Sutherland.

21. In a suit by the gold-thread spinners *Pancháyit,* at Surat, against a member of their body, for working for a wire-drawer, contrary to a bye-law of the Cast; a decree was given in their favour by the Assistant-judge (Fawcett), and the Judge (Barnard), as it was proved that he had signed the agreement; but on appeal it was held, that though it was fully proved that he was a party to the engagement, bye-laws and private engagements like the present, tending to the injury of the public, could not lawfully be made the ground of an action; and the decrees of the Lower Courts were reversed, relieving the appellant from the responsibilities incurred, and making the respondent liable for all costs. *Gerdhur Mooljee* v. *Jugjeeven Luxmeechund, on the part of the Vitrarah Punchayet.* 8th May 1832. Sel. Rep. 94.—Ironside, Baillie, & Henderson.

CAVEAT. — See Costs, 19, 20; Executor, 47; Practice, 207.

CERTIFICATE.—See Bankrupt, 1, 2, 3.

CERTIORARI.

1. The Court will interfere to stay a plaint in the Petty Court, involving the title to real property or in a case of difficulty. *Rajah Raykissen* v. *Joykissen Sing and others.* 1st July 1819. East's Notes. Case 102.

2. The Court have power to refuse

a *certiorari* to remove a cause of small amount, and not being of an intricate nature, or involving any general right, from the Petty Court.[1] *Kertychunder Holdar* v. *Torrachund Bosse.* 4th Term 1819. East's Notes. Case 106.

2 *a.* A *certiorari* was refused to an attorney who had been sued in the Petty Court, and had moved for the writ to remove the proceedings into the Supreme Court on his privilege of attorney. *Burne* v. *Trebeck.* 29th Oct. 1821. East's Notes. Case 29.

3. Writ of *certiorari* to the Commissioners of the Court of Requests issued *after Term.* A rule was granted to shew cause why the plaintiffs should not file their plaint against the defendant, and pay the costs of the application, and the writ of *certiorari* and the proceedings thereon. The Court discharged the rule without costs, but desired it might be understood, in future, that they would not grant such rules.[2] *Lyall and others* v. *Courtayne.* 18th Nov. 1833. Clarke's Notes, 111.

3 *a.* The Supreme Court has not the power to remove, by *certiorari*, the conviction, by a Zillah magistrate, of a British subject, unless such conviction be under the 53d Geo. III. c. 155. *In the matter of Pattle.* 14th Nov. 1836. 1 Fulton, 313.

4. An affidavit by a British subject that he *believes* the conviction by a Zillah magistrate to be under the 53d Geo. III. c. 155. is sufficient to entitle him to a rule absolute, in the first instance, for a *certiorari.* *Ib.*

5. A Zillah magistrate may put in affidavits in reply to those on which a rule *nisi* for a *certiorari* is founded. *Ib.*

6. If the applicant be entitled to a *certiorari* a rule absolute will go in the first instance if applied for. *Ib.*

7. Rule absolute in the first instance for a *certiorari* to a Mofussil magistrate for an error apparent on the face of his conviction. *In the matter of Russell.* 5th Nov. 1838. 1 Fulton, 362.

8. The Court granted a *certiorari* to remove a conviction by a joint magistrate, under the 53d Geo. III. c. 155. s. 105., suggesting, for the consideration of counsel, that the writ might be affected by the 9th Geo. IV. c. 14. s. 48, 49. *Sed quære.*[3] *Ib.* Clarke's Notes, 119.

CESSES.

1. A *Zamíndár* claimed a sum of money from his farmer, alleged to have been realised by the latter from the tenantry under the head of *Zabita batta*, or customary levy of an excess of half an anna in each rupee, and stipulated in the *Kabúlíyat* to be payable to the *Zamíndár.* Held, that such claim is illegal under Sec. 3. of Reg. V. of 1812, which provides that the imposition of arbitrary or indefinite cesses, whether under the denomination of *abwáb*, *mat'hóte*, or other denomination, is illegal, and that all stipulations of that nature should be judged by the Courts to be null and void. *Radha Mohun Serma Chowdry* v. *Gungapershad Chucherbuttee and others.* 16th Dec. 1843. 7 S. D. A. Rep. 142.—Tucker, Reid, & Barlow.

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[1] By the 21st section of the Charter the Petty Court is subject to the order and controul of the Supreme Court.

[2] In the cases of *Ramchunder Mullick* v. *Ramchunder Day*, and *Moha Raja Rajkissen Bahadoor* v *Joykissen Sing and others*, two similar rules had been obtained and discharged, but apparently on the merits

[3] The Court granted the *certiorari* in this instance on the following grounds—That it appeared, on the face of the conviction, that the magistrate had refused to summons or examine the defendant's witness, that the conviction was against the evidence, the complainant contradicting all his own witnesses, that the complainant was not a native of India, being a Cingalese; and that the form of the conviction was wrong, it being in Persian, and defective in many essentials.

CHAKLÁDÁRÍ.—See ACTION, 13; DUES AND DUTIES, 9.

CHAMPERTY.—See CONTRACT, 25, 26.

CHARITABLE BEQUEST.

1. It was held, that where certain persons had been appointed, by will, to dispose of funds for charitable purposes, such persons were to have the sole direction of distribution without being subject to the interference of the Court except as to supervision. *Anon.* 31st Jan. 1814. East's Notes, Case 8.

2. Property bequeathed by a Roman Catholic for distribution among the poor was held not to be applicable for the repairs of a Roman-Catholic church and convent, represented by the applicants to be in a state of great decay. *Ib.*

3. Where a testator, by his will, bequeathed certain property to be laid out after his death by his executors in pious uses, such as the saying masses for his soul, and also for distribution among the poor; it was held, that saying masses for the soul of the testator was included in the general description of superstitious uses in the Statute, being such as our Church abhors and disallows, and that part of the testator's will was accordingly decreed to be set aside as contrary to law, and the whole fund to be appropriated to charities. *Ib.*

4. Where a testator bequeathed a certain principal sum for a charitable purpose, to be lodged in the Company's treasury until the occurrence of a certain specified event, and the interest to be carried to the credit of his estate annually until the occurrence of such event; it was held, that all interest until such occurrence was to be considered as assets of the estate. *Sukies* v. *Sukies.* 28th Jan. 1816. East's Notes, Case 43.

5. Various bequests and donations having been given to the Capuchin Monks at Madras, and a large amount existing applicable to charitable and religious purposes, the Government had interfered, and appointed Syndics, who were to deposit the funds in the treasury of the Company, and to pay the interest arising therefrom to the Superior of the order. The Superior refusing to account for the expenditure of the interest, the Syndics refused to pay him any more, and the Government declining to interfere, the Superior, in conjunction with the præfect of the order, filed a bill against the Syndics and the Company. The Superior Court referred it to the Master to take an account of the funds in question in the hands of the defendants, and also to inquire how they had been applied; directing him also to inquire into and state the nature and extent of the various and different trusts, duties, bequests, and donations, relating to the said Capuchin Church, with liberty to report specially if he should have occasion or be required so to do; reserving further directions until he should have made his report. *Baptiste and another* v. *The East-India Company and others.* 4th April 1816. 2 Str. 385.

6. A bequest for a charitable institution at Lucknow, out of the jurisdiction of the Court, was directed to be paid to the Governor General, to enable him to carry out the intentions of the testator. *The Martin Case.* 10th May 1836. 1 Fulton, 257.

7. A testator devised considerable property, both real and personal, for charitable purposes, amongst which he directed certain sums to be set apart for the liberation of prisoners confined for debt, and for the endowment and establishment of a College at Lucknow, in the dominions of the King of Oude. A suit having been instituted in the Supreme Court of Calcutta to administer the will, the Court directed an inquiry whether the College could be established, and the bequest for the liberation of prisoners carried into effect, with reference to the testator's intention, and

the sanction of the Government at Lucknow. On the subject of the bequest for the liberation of prisoners, the Master found in the negative; and reported that, with respect to the establishment of the College, there was not sufficient evidence to enable him to state whether it could be established, with reference to the testator's intention and the sanction of the Lucknow Government; but as no further evidence was likely to be obtained, he appended the correspondence with the British Resident at Lucknow, by which it appeared, that though the King of Oude did not object to the establishment of the College, he held out no expectations that he would afford it his countenance or support. The Report having been confirmed, and a decree made thereon, the Supreme Court, on a rehearing, directed an inquiry whether the Governor-General in Council had the means of giving effect to the bequest to the College at Lucknow, and whether he was willing to receive the funds bequeathed for that purpose. The Master found that the Governor-General was willing to receive the funds, but did not state whether he had the means of giving effect to the bequest. The Court, however, therefore decreed the payment of the funds to the Governor-General, or such person as he should appoint. Upon appeal to the King in Council, it was held by the Judicial Committee, that they thought the reference to the Master, on the rehearing, after the confirmation of his previous Report, was informal, and if objected to at the time would have been fatal; yet as no objection had been taken, and the Master had not satisfied the whole of the inquiry, by stating whether the Governor-General had the means of carrying the testator's intention into effect, that part of the decree affirming the Master's Report, and directing the payment of the fund to the Governor-General, must be reversed, and the case sent back to ascertain that fact; their Lordships being of opinion, under the existing relations between the East-India Company and the King of Oude, an arrangement might be made for the appointment of a trustee to carry the Lucknow bequest into effect, under the direction, and subject to the jurisdiction of the Supreme Court. *The Mayor of Lyons and others* v. *The East-India Company.* 12th Dec. 1836. 1 Moore, 175.

8. Bequests for Hindú religious and charitable purposes, made by a Hindú, will not be upheld if vaguely described. *Sandial* v. *Maitland.* 29th July 1844. 1 Fulton, 475.

CHARITABLE GIFT. — See GIFT, 10.

CHARTER.

I. INTERPRETATION OF CHARTERS.

II. APPEALS UNDER.—See APPEAL, 14, *et seq.* 39, 40; CRIMINAL LAW, 1, 1*a.* 45.

I. INTERPRETATION OF CHARTERS.

1. *Quære,* Whether the East-India Company are grantees under the Charter of the property of intestates leaving no next of kin? *In the matter of Nanny Wynne.* 20th Aug. 1802. 1 Str. 165.

1*a.* The Charter of the Supreme Court is to be construed by the Act of Parliament upon which it is founded. *Vencata Runga Pillay* v. *The East-India Company.* 20th Sept. 1803. 1 Str. 180.

2. Dictum of Anstruther, R.—The term "inhabitants of Bombay" in the Statute and Charter of 1797 is used in contrast with the natural-born subjects of the King in India, whether inhabiting Bombay or not. *Madoo Wissenauth* v. *Balloo Gunnasett.* 30th Jan. 1818. Mor. 157.

3. Semble, the word "determina-

tion" in the Charters of Madras and Bombay is equivalent to the "decree or decretal order" of the Bengal Charter. *Nathoobhoy Ramdass* v. *Mooljee Madowdass and others.* 7th Feb. 1840. 3 Moore, 87. 2 Moore, Ind. App. 169.

4. The words "all indictments, informations" &c. in the Bombay Charter do not include capital offences. *In the matter of Alloo Paroo.* 26th June 1847. *In the matter of Eduljee Byramjee.* 26th June 1847. MS. Notes of P. C. Cases.

CHAUDHARÍ.—See ACTION, 13, 13*a*.

CHAUDHRAÍ.—See DUES and DUTIES, 9; LAND TENURES, 24.

CHÍLÁ.—See INHERITANCE, 189, *et seq.*; EXECUTOR, 21.

CHILD STEALING.—See CRIMINAL LAW, 88.

CHOWDRAI.—See DUES and DUTIES, 9; LAND TENURES, 24.

CHOWDRY.—See ACTION, 13, 13*a*.

CHUCKLADÁRÍ.—See ACTION, 13, 13*a*.—DUES and DUTIES, 9.

CIVIL COURTS.—See JURISDICTION, *passim.*

COIN, COUNTERFEITING THE.—See CRIMINAL LAW, 89, *et seq.*

COLLECTOR.

I. POWERS OF THE SUPREME COURTS OVER COLLECTORS, 1.

II. POWERS OF COLLECTORS, 2.

III. JURISDICTION OF THE SUPREME COURTS AS REGARDS COLLECTORS. See JURISDICTION, 157 *et seq.*

IV. LIABILITY OF COLLECTORS. — See PUBLIC OFFICER, 9. 13.

I. POWERS OF THE SUPREME COURTS OVER COLLECTORS.

1. In an action against a Collector of the Company, the Court will issue process as of course, without inquiry, whether the action be for any act done in the collection of the revenue, or under the Regulations of the Governor-General and Council within the 21st G. III. c. 70. s. 8. *Ramcaunt Numdil* v. *Colebrooke.* Chamb. Notes. 1st Nov. 1791. Mor. 140.

II. POWERS OF COLLECTORS.

2. *A*, a *Zamíndár*, claimed to recover land alleged to have been encroached upon and to be illegally occupied by *B*. But it appearing on evidence that the unauthorized encroachment of *B*, if it were an encroachment, took place previously to the permanent settlement; it was held, that under the provisions of Reg. XXXI. of 1802 it was competent only to the Collector, under the authority of the Board of Revenue, to call in question *B*'s title to hold possession of the lands in dispute. *A*'s claim was accordingly dismissed, with all costs. *Zamíndár of Pettapore* v. *Bhooputty Rauz Sooborauze.* Case 14 of 1815. 1 Mad. Dec. 135. —Scott, Greenway, & Ogilvie.

3. A Collector had attached certain villages for arrears of revenue. The defaulter dying, an alleged adopted son tendered the arrears, and claimed to be put in possession: there appeared to be another party entitled. Held,

that under the circumstances the Collector was fully justified in retaining possession of the villages, until he should receive legal authority for delivering them up. *Collector of Guntoor* v. *Rajah Vassareddy Jugganadha Baboo.* Case 8 of 1818. 1 Mad. Dec. 203.—Scott, Greenway, & Ogilvie.

3 *a*. A Collector cannot annul a sale of lands which he considered to have been made under a fictitious name, the power of confiscating, under such circumstances, being reserved exclusively to the Governor-General in Council. *Debee Dutt* v. *The Collector of Gorruckpore.* 21st April 1819. 2 S. D. A. Rep. 294.—Fendall & Goad.

4. According to the Regulations, a Collector can only attach a farm, or a *Zamíndárí*, of a defaulting proprietor, in his capacity of Collector, under the provisions of Reg. XXVII. of 1802.[1] *Rajah Manoory Venkatarow Zamíndár* v. *Anundarow.* Case 4 of 1822. 1 Mad. Dec. 328.—Grant & Gowan.

5. Where a settlement had been made with one individual as proprietor, it was held, that, under Cl. 8. of Sec. 53. of Reg. XXVII. of 1803, a Collector is not competent to substitute another individual without a judicial decree.[2] *Murdun Singh and others* v. *Rughoonath Pathick.* 19th July 1823. 3 S. D. A. Rep. 239.—Martin.

5 *a*. A Collector has full liberty to sue either the individual defaulters of a *Jamaát* for payment of government dues, or the particular *Patéls* who had collected such dues, and had not brought them to account. *Agar* v. *Dhoolubh Bhoola and others.* 9th Aug. 1823. 2 Borr. 548.—Romer, Sutherland, & Ironside.

5 *b*. A Collector cannot of his own authority refund money, paid into the Treasury as a loan to Government, to the heirs of a party so paying the money, and dying before the promissory note of the amount of the deposit had been made over to him. *Collector of Chittagong* v. *Mt. Mallaka Banoo.* 2d Feb. 1841. 7 S. D. A. Rep. 13.—Lee Warner & D. C. Smyth.

COMMANDER IN CHIEF.

See Army, 1 *et seq.*

COMMISSION.

I. Agents. — See Agent and Principal, 1, 2. 4. 11. 14.

II. Executors.—See Contract, 10; Executors and Administrators, 74 *et seq.*

III. To Examine Witnesses.—See Evidence 40. 42. 46. 49, 50. 52 *et seq.*

IV. Of Lunacy.—See Lunatic, 3; Practice, 10.

V. Registrars.—See Registrar, 2 *et seq.*

[1] Under this Regulation, when any landholder, who should pay revenue immediately or direct into the Treasury of the Collector, or of his subordinate officer, a *Tahsildar*, or other native revenue officer, fails in the regular payment of his revenue and falls into arrear, the Collector, on the part of Government, is invested with the power of attaching his estate; but then he has no power to annul the defaulter's right of property therein. It is true he may sell it for the discharge of the arrear; but if he retain it in attachment, he is required by Cl. 5. of Sec. 13. of the above Regulation to restore it to the defaulter, on the arrear being in any way discharged. It appeared in the above case that the revenue, considered apart from rent, payable by the lessee to the Government, was punctually discharged, and the Collector, in his capacity of revenue officer, had no further demand upon him; for which reason he could not, under the above Regulation, legally attach the estate and cancel the lease.

[2] The provision on which this case principally turned has been re-enacted by Sec. 13. of Reg. VII. of 1822, which prescribes that Collectors, and other officers exercising the powers of Collectors, shall not, unless when specially authorized, do any act tending to disturb possession, but shall leave the Adawlut to investigate, in a regular suit, all claims of persons not in possession, but deeming themselves entitled to be so

COMMITMENT.—See CRIMINAL LAW, 94 *et seq.*

COMMITTEE.—See LUNATIC, 2.

COMPOSITION FOR MURDER.

1. Composition for murder is allowed by the Muhammadan law, and the agreement for it becomes a binding contract.[1] *Nunda Sing* v. *Meer Jafier Shah.* 10th April 1794. 1 S. D. A. Rep. 4.—Sir John Shore & Council.

COMPROMISE.[2]

1. A compromise, entered into between the parties to a suit, while such suit was depending, was set aside, in consequence of one of them not having performed the condition of it. *Mehunt Rampershaud* v. *Mehunt Odunqir.* 5th June 1807. 1 S. D. A. Rep. 188.—H. Colebrooke & Fombelle.

2. A written engagement of the defendant to the plaintiff (his uncle), which had been the ground of the plaintiffs withdrawing a law-suit against the defendant, and which contained an allotment of *Deowattar* lands to the plaintiff on an implied condition, viz. the partition of a joint property within a stated period, was upheld by the Sudder Dewanny Adawlut, on the circumstances of the case, though the condition was as yet unperformed, and judgment was passed, providing that the plaintiff might obtain the lands on the partition being carried into effect.[3] *Gourishunkur and another* v. *Beijnath.* 18th Dec. 1807. 1 S. D. A. Rep. 222.—H. Colebrooke & Fombelle.

3. Where two parties executed a deed of compromise (*Soluhnámeh*), and one of the parties afterwards pleaded that fraud and intimidation had been resorted to; it was held, that under the Hindú law, as current in Mithila, such plea, unless clearly substantiated, could not, nor could a plea of ignorance of existing facts, excuse the party engaging. *Sreenarain Rai and another* v. *Bhya Jha.* 27th July 1812. 2 S. D. A. Rep. 23. — Harington & Stuart.

4. The preceding decision was confirmed, on appeal, by the Judicial Committee of the Privy Council, when it was held, that a *Soluhnámeh*, entered into in the presence of witnesses, and solemnly acknowledged in Court, by parties who were mutually ignorant of their respective legal rights, cannot afterwards be set aside upon plea of ignorance of the real facts, when the party seeking to avoid the deed had the means of ascertaining those facts within his reach. *Rajunder Narain Rae and another* v. *Bijai Govind Sing.* 20th Dec. 1839. 2 Moore Ind. App. 181.

5. The *onus* of shewing that a compromise has been fraudulently obtained by intimidation and false representation is cast upon those who seek to impeach the validity of their own deed. *Ib.*

6. Pending a suit between *A* and *B*, terms of a compromise were settled between the parties, by which they mutually released each other, and *B* agreed to pay a consideration. No clause to this effect was inserted in the release signed by *A*, and

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[1] 4 Hed 99

[2] The cases under this title have been arranged without subdivision, as it does not always appear on the face of the Report by what law each individual decision was governed. It may, however, be noticed, that Nos. 3, 4. 9, & 9*a*, are clearly according to the Hindú law

[3] At the same time it was thought proper by the Court to signify to the parties, that the transfer of *Deowattar* lands, as specified in the defendant's agreement, could only be carried into effect as far as was consistent with the Regulations, and that, in case of there not being the quantity specified, actually and duly held as *Deowattar* by the defendant's father, the deficiency could not be supplied from other lands, responsible for the public revenue.

lodged with *C*; but on proof of the fact by *C*, the compromise was enforced by the Court, and the consideration awarded to *A*, costs being made payable in equal shares. *Bireswar Dyal Singh* v. *Jai Nath Singh*. 7th April 1831. 5 S. D. A. Rep. 107.—Turnbull.

6 *a*. The evidence of a single witness, corroborated by circumstances, is sufficient to prove a compromise. *Ib*.

7. *A* sued *B* for the moiety of an estate held jointly, and *B*, in answer, asserted his right to the whole. *A*'s suit was withdrawn on a compromise, by the terms of which *A* assured to *B* the reversion of the moiety held by him, and generally, of his entire estate, real and personal. In a subsequent action brought against *B*, by *A*'s heirs, it was held, that the claim, as to the moiety of the estate specified, was repelled by the compromise. *Ibrahim Khan* v. *Sayud Muhammad Arab and another*. 19th Sept. 1831. 5 S. D. A. Rep. 143.—Turnbull & Rattray.

8. A deed of compromise should be construed liberally; so that where an item of property was left out of a contemporary schedule, of properties partible amongst litigants, the plaintiff should have the benefit of the principle of the compromise. *Brij Iswari* v. *Bindra Ban Chandra Raj*. Jan. 1832. 5 S. D. A. Rep. 159. —Turnbull & Rattray.

9. *A*, a Hindú, had repudiated a settlement made by his elder brother, *B*, of estates alleged therein to be the sole acquisition of *B*, by which one quarter was allotted to him, and sought to recover a moiety of a part by title of community. Pending litigation, an award of arbitration, under a bond of submission, was passed in conformity with the deed; and then a compromise was had, in pursuance of which *A* signed retraction, which he afterwards denied, and failed to file in Court. His claim for a moiety by title of community was disallowed, but he obtained a decree for a quarter on the deed; and in a later action, brought by *A* against the heirs of *B*, it was held, that the judgment of the Court must be ruled by the prior decision, and that *A* should recover a quarter share under the deed and compromise, his repudiation and denial notwithstanding. *Báman Dás Mukhopádhya* v. *Radhánáth Mukhopádhya*. 18th April 1832. 5 S. D. A. Rep. 187.

9 *a*. A Hindú widow cannot, during the minority of her sons, compromise an action regarding the property of her late husband, and such compromise will be set aside on application by the sons on attaining their majority. *Ram Kewul Biswas and others* v. *Juggurnath Biswas and others*. 29th Jan. 1835. 6 S. D. A. Rep. 19. —H. Shakespear, Robertson & Stockwell.

10. If one party to a compromise does not comply with its conditions, the other party is not bound by it. *Purtab Singh Dugar* v. *Anundram Jani*. 27th April 1837. 6 S. D. A. Rep. 160.—Braddon & F. C. Smith.

11. A deed of compromise, executed by an Armenian woman, possessed of two-thirds of an estate, both of which had descended to her from her father, who held one-third absolutely in his own right, and the other under the will of his grand uncle, which it was alleged had given him only a life interest in that third, was held to be binding on the woman's representatives, though not claiming in her right, but directly under the will; as it appeared that, notwithstanding the deed of compromise, they were still left in possession of one full third of the estate, and there was no doubt of her competency to dispose of the other third. *Gasper Malcum Gasper* v. *Hume and others*. 30th Nov. 1841. 7 S. D. A. Rep. 54.—Tucker & Barlow.

COMPULSION, HOMICIDE BY.—See Criminal Law, 113.

CONCEALMENT OF MURDER.—See CRIMINAL LAW, 114.

CONDUCTOR OF PILGRIMS.

1. It was held, that pilgrims to Gya are at liberty to choose their own *Kurhwa*, or conductor, who will enjoy the emoluments arising out of the office, notwithstanding any claim of right to officiate in that capacity set up by another person. *Behoree Gyawal* v. *Mt. Deepoo.* 17th Jan. 1816. 2 S. D. A. Rep. 164.—Harington.

2. It was held, that the presents made by pilgrims of certain sects to any of the Benares *Gangaputras*, or conductors, must be divided equally among them all, according to the usage of the tribe. *Dwalnath and others* v. *Kewul Ram and others.* 22d Feb. 1826. 4 S. D. A. Rep. 123.—Sealy.

CONFESSIONS.—See CRIMINAL LAW, 115 *et seq.*

CONFISCATION.

1. Where a piece of land had been the occasion of disputes between two parties, each claiming the ownership, and these disputes had led to a serious affray, in which some persons had been wounded; at the suit of the Collector, and on proof that such affray had actually taken place regarding the contested claim, it was held, that the land in question was duly forfeited under Sec. 6. of Reg. XLIX. of 1793.[1] *Pran Kishen Dutt* v. *The Collector of the Twenty-four Pergunnas.* 6th Jan. 1825. 4 S. D. A. Rep. 3.—Martin.

2. *A* instituted a suit in the year 1820, claiming by inheritance a share of an estate which he alleged was the joint property of *B* and *C*, his father and uncle, and which had been confiscated by Government in consequence of the rebellion of *C*, and had been granted to *D* by a *sanad* twenty-three years previously, asserting that he had not attained his majority until the year 1807, and that his father had disappeared. *A* was nonsuited on the ground that any right of *B* became extinct on account of the rebellion in which he had participated, and that therefore *A* derived no right from him, and, moreover, because *B* was still alive and in jail. The Court, however, reserved *A*'s right to sue separately for three villages (part of the said estate) settled in his name.[2] *Mahipat Singh* v. *Collector of Benares and another.* 29th May 1830. 5 S. D. A. Rep. 32.—Turnbull.

CONICOPOLY.—See MÍRÁSADAR, 2, 3.

CONSPIRACY.—See CRIMINAL LAW, 170 *et seq.*

CONTEMPT.

I. IN THE SUPREME COURTS, 1.

II. IN THE COURTS OF THE HONOURABLE COMPANY, 15 *a.*

I. IN THE SUPREME COURTS.

1. Where a complainant had forci-

[1] The whole of this Regulation was rescinded by Act IV. of 1840

[2] In this case Mr. Turnbull observed, that if the other arguments were even pretermitted, the action was barred by the lapse of twenty-three years, during which *D* had enjoyed quiet possession under a grant from Government. It is by no means certain that the confiscation of property by Government, on account of rebellion, would act as a ground of exclusion from inheritance by the heirs of a member of an undivided family, where it is merely asserted, and not proved, that the ancestor of the claimant had participated in the rebellion in which another member of the joint family had been concerned, and for which the whole property had been confiscated

bly possessed himself of the property in litigation, the Court ordered him to deposit the property with the Registrar of the Court *instanter*, or to stand committed for his contempt. *Woomeschunder Paul Chowdry and another* v. *Premchunder Paul Chowdry and others.* 13th Jan. 1820. East's Notes, Case 110.

2. Parties in contempt are not excluded from shewing cause against making a rule *nisi* for an injunction absolute; and may even move to enlarge the rule *nisi*. *Indnarain Ghose* v. *Beprodoss Ghose.* Sittings after 2d Term 1826. *Womeschunder P. Chowdry* v. *Isserchunder P. Chowdry.* 3d Dec. 1824. Cl. R. 1829. 278.

2 *a*. A party in contempt may be heard when praying leave to appeal. *Sreemutty Ranee Hurrosoondry Dossee* v. *Cowar Kistonauth Roy and others.* 27th Oct. 1842. 1 Fulton, 85.

3. A *capias* for contempt will not be set aside for irregularity on the ground that it had issued on the Sheriff's return of summons made and no appearance entered, and the defendant putting in an affidavit of his not having been personally or at all summoned, and not having authorised any attorney to enter an appearance for him or receive the summons. *Omachurn Bannerjee* v. *Goluckchunder Roy.* 1st Feb. 1826. Cl R. 1829. 145.

4. No affidavit of the service of a summons is necessary in order to obtain a *capias* of contempt; and a *capias* will not be set aside on an affidavit that there has not been service. *Ib.*

5. The Court directed that all amendments should be specially brought to its notice, together with the state of the cause; and that all processes of contempt should fall, unless the amendment were allowed without prejudice to them. *Bhuggobuttychurn Mitter* v. *Gooroopersaud Nundy.* 2d Feb. 1828. Cl. R. 1834. 22.

6. Process of contempt, which had been issued against an infant, was set aside, with costs, for irregularity. *Buddinauth Paul Chowdry* v. *Bycauntnauth P. Chowdry.* 1st Feb. 1831. Cl. R. 1834. 33.

7. Proclamation for want of appearance to a bill in equity was granted, without an affidavit that the defendant had absconded, and was out of the jurisdiction. *Nilmoney Mullick* v. *Brijomohun Seal.* 21st June 1819. Cl. R. 1829. 273. *Collypersaud Nundee* v. *Sumboochunder Nundee.* 4th Term 1832. Cl. R. 1834. 45.

8. Dictum of Ryan, C. J.—A Court having no jurisdiction over a British subject has still a jurisdiction over all persons for contempt. *In the matter of Pattle.* 14th Nov. 1836. 1 Fulton, 313.

8 *a*. Semble, A Zillah Magistrate may be punished for a contempt of the Supreme Court. *Ib.*

9. The process of contempt, under Eq. Process R. 3[1], having been exhausted, and a writ of sequestration returned *nulla bona*, the Court held it doubtful whether the complainant might have an *alias* writ of attachment, and so commence a new series. Perhaps the complainant might move for a writ of proclamation, and, after that writ had been executed, a commission of rebellion; but the Court will not leap over any intermediate stages of process. *Rammohun Mullick* v. *Nubhissore Seal and others.* 21st June 1839. Mor. 296.

10. The Court stated that it would be a contempt if the Sheriff entered the *Zanáneh* to execute a sequestration, not having any order at the time, when the females were not in the *Zanáneh*, but had gone to visit at another house. *Doorgadoss Mookerjee* v. *Sreemutty Bindobassanee Dossee.* 30th Oct. 1839. Barwell's Notes, 124. 1 Fulton, 370.

11. Motion to discharge order for

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[1] 2 Sm. & Ry. 166.

taking the bill *pro confesso*, and for leave to clear contempt and file answer, must be upon notice, and on affidavit setting forth the cause of delay. *Joykissen Bysack* v. *Radakissen Mitter*. 12th Feb. 1840. Mor. 305.

12. Processes of contempt will not be set aside as of course. *Mirza Kuzul Ally* v. *Shaik Auhem and others*. 22d June 1842. 1 Fulton, 11.

13. Other matter may be included in a motion to clear a contempt than the mere application necessary for that purpose. *Chattoo Sing* v. *Rajkissen Sing*. 28th June 1842. 1 Fulton, 27 and 30

13 *a*. A contempt cannot be cleared till after the costs incurred thereby have been paid by the party in contempt. *Ib*.

14. A defendant in contempt by resisting a writ of assistance, moved for an order that the complainant should, within four days, file interrogatories for the defendant's examination upon the contempt, and that in default thereof he should be discharged from his contempt, which order was made. The complainant then moved that the interrogatories filed should be referred to the Master to settle, and that the Master should take the examination of the defendant upon them, which order was also made. *Hurloll Tagore and others* v. *Rajessory Dabee and others*. November 1842. 1 Fulton, 120.

15. After attachment for want of answer, the next process of contempt to be moved for, if necessary, is a commission of rebellion, or a writ of sequestration. *Eglington* v. *Huffnagle*. 23d Dec. 1843. 1 Fulton, 343.

II. In the Courts of the Honourable Company.

15 *a*. A person using opprobrious language in a defence filed in a Magistrate's Court may be fined for contempt under Cl. 2. of Sec. 5. of Reg. XII. of 1825.[1] *Hedger* v. *Maharani Kamal Kumari*. 22d April 1841. 1 Sev. Sum. Cases, 115. 7 S. D. A. Rep. 29.—Warner & D. C. Smyth.

CONTRACT.

I. Hindú Law, 1.
II. Muhammadan Law, 4.
III. In the Supreme Courts, 7.
IV. In the Courts of the Honourable Company, 12.
1. *Contracts generally*, 12.
2. *Construction of*, 18.
3. *Conditional Agreements*, 21.
4. *Illegal Contract*, 25.

I. Hindú Law.[2]

1. Possession of the subject of an agreement is not necessary by the Hindú law, as current in Mithila, to give validity to such agreement. *Sreenarain Rai and another* v. *Bhya Jha*. 27th July 1812. 2 S. D. A. Rep. 23.—Harington & Stuart.

2. A contract was entered into by two persons for the sale and purchase of a house. The purchaser paid the *Bayánch*, or earnest money, and the balance was to be made good on the execution and registry of a final deed of sale within one month from the date of the contract. In the mean-

[1] See Constr. 619, par. 2.

[2] The reader will perceive that I have always arranged the cases governed by native law *first*, under each title, as the decisions are equally applicable to cases arising in the Supreme or the Honourable Company's Courts. The Regulations do not require the Sudder and Mofussil Courts to decide questions of contract by the native laws; but I have still adhered to my plan of arrangement, inasmuch as it occasionally happens, that a reference to the native laws respecting Contracts is found necessary in questions arising in the Courts of the Honourable Company connected with the law of Inheritance, &c.; and indeed it may be remarked, that all the cases under the present title noted in the text, decided by native law, were heard and decided in the Courts of the Honourable Company.

time part of the house fell down, and the purchaser refused to complete the purchase. It was held, according to the *Vyavashta* of the law officers, that the contract might be annulled if it so pleased the purchaser, as the buyer's ownership had not commenced, the term not having expired, and the price not having been paid, so that the seller's right to the property remained untouched: the earnest, however, was declared to be forfeited. *Nursing Bhana* v. *Sunhurdas Mukundas and another*. 28th March 1815. 1 Borr. 403.—Prendergast, Keate, & Sutherland.

3. In the case of a manufacturer breaking his contract for the supply of a certain article, and the merchant acceding to it by a partial receipt of the article, the Court held (under an award of the trade, contrary to the opinion of the law officers under the Hindú law of Contracts), that the manufacturer was liable for damages incurred, through his breach of contract, by the merchant.[1] *Brijbhookundas Veerchund* v. *Kuhandas Behchurdas*. 9th Jan. 1823. 2 Borr. 234.

II. Muhammadan Law.

4. An engagement by *A*, the widow of a deceased Muhammadan, to *B*, his son, stating that *B* shall sue for her share of an estate then under litigation, and that the same shall become the property of *B*, *B* supporting *A* for life, is not, in Muhammadan law, valid as a conveyance of property. *Kishwur Khan* v. *Jewun Khan*. 9th Aug. 1799. 1 S. D. A. Rep. 25.—Cowper.

5. By the Muhammadan law, in a commutation of money for money, the delivery must be immediate.[2] *Mt. Rabea Khatoon and another* v. *Budroonissa*. 28th Dec. 1841. 7 S. D. A. Rep. 62.—Lee Warner & Reid.

6. It is essential to the validity of a contract of exchange, that the subject of it, and the consideration, be distinctly specified.[3] *Ib.*

III. In the Supreme Courts.

7. If a commodity be contracted for in gross to be of a certain specified quality, the person contracting to receive such commodity is not bound to take any part of the quantity agreed for, if the larger residue were not of the quality and denomination specified in the agreement. *Mohon Loll Tagore* v. *Noroojee Cahoojee*. 1st Feb. 1815. East's Notes, Case 16.

8. Brokers' bargains do not bind unless both principals are truly made acquainted with the terms of the bargain struck. *Ib.*

9. Exact copies of brokers' memoranda of a contract must be given to both principals to make such contract binding. *Ib.*

10. An agreement obtained by an executor from the sole next of kin and heir at law, for commission, is not such a contract between two independent parties as the Court will sanction or enforce. *Cursondass Hunsraz* v. *Ramdass Hurridass*. 26th July 1842. Perry's Notes, Case 4.

11. If there be a fraud in the original contract of sale, the sale will be vitiated, and the delivery afterwards will not pass the property; but if the contract of sale be complete, no fraud in obtaining possession of the goods will invalidate such contract, but possession so obtained is a transfer of the property. And where *A* made a bargain for the purchase of certain goods from *B*, and *A* sent his clerk to a partner of *B*'s with a cheque, and the latter delivered the goods to the clerk, and the cheque turned out to be a forgery, and in the meanwhile *A* had obtained an advance of money

[1] For the law relating to the non-performance of agreements, see 2 Coleb. Dig. 285 *et seq.*

[2] Macn. Princ. M. L. 43, par. 12.

[3] Macn. Princ. M. L. 43. par. 13. and Do. 178.

on the goods from *C*, and had then absconded; it was held, that *C* was a *bonâ fide* purchaser, and was entitled to retain possession of the property. *Cassimbhoy Nathabhoy and another* v. *Jewraz Balloo.* 13th Nov. 1846. Perry's Notes, Case 17.

IV. In the Courts of the Honourable Company.

1. *Contracts generally.*

12. A contractor who had fallen into arrears, and who engaged to liquidate them gradually by a certain period, was held not to be responsible for the balance; the contract having been taken away from him before the expiration of the period specified. *Commercial Resident at Patna* v. *Adeet Sing.* 29th April 1805. 1 S. D. A. Rep. 88.—H. Colebrooke & Fombelle.

13. *A* enters into an engagement with *B*, acknowledging himself to be in arrear for advances to the amount of Rs. 7746, and engaging to furnish silk to that value, and to clear off the arrear within a given time, or on failure thereof to pay ready money, with interest agreably to Reg. XXXI. of 1793.[1] An action being brought by *B* for the recovery of the penalty specified in Cl. 7. of Sec. 3. of the above-mentioned Regulation; it was held, that he was only entitled to recover interest at 12 per cent. on the balance of the arrear, on the ground of the irrelevancy of the clause and section above specified to the case of *A*. *Bishonath Mitter and others* v. *Commercial Resident of Comercolly.* 16th July 1816. 2 S. D. A. Rep. 192.—Ker & Rees.

14. Where a person claimed possession of certain villages under an *Ikrárnámeh*, or written acknowledgment from the conditional purchaser, alleged to have been executed nine years after the sale had become absolute, his claim was rejected, the agreement not being proved, or, though proved, being either without a consideration, or the condition violated by the claimant. *Gopal Lal* v. *Raja Torulnarain Singh.* 25th Sept. 1826. 4 S. D. A. Rep. 182.—Leycester & Dorin.

15. Where a suit was brought to recover a sum of money alleged to be due to the son of the late incumbent of the office of *Mufti* at Surat upon a parole engagement with his successor to support him and his mother, he not being fit to succeed to the office, the Ameen and the Assistant Judge (Grant) decreed in the plaintiff's favour, as there appeared no reason why a written engagement should not have been executed had the necessity for such been contemplated; but their decrees were reversed on appeal, the Court considering, that as the agreement had been made apparently subsequent to the appellant's appointment it was revocable, the arrangement being of a private, and not of a binding nature, after it had ceased to be voluntary on the part of the appellant. *Mooftee Muslehoodeem* v. *Sheik Kheiroodeen.* 8th May 1832. Sel. Rep. 97.—Ironside, Barnard, Baillie, & Henderson.

16. A *Satakhatt*, or preparatory instrument in the nature of articles of agreement, intended to be followed by the execution of a more formal conveyance, was held to be sufficient to bind property, and to give the party to whom it was executed the right to demand specific performance of the contract, and the execution of such further assurances as might be deemed necessary to invest him with a complete title to the property which was the subject matter of the suit. *Lala Choonelal Nagindas* v. *Sawaechund Namedas.* 21st May 1835. 3 P. C. Cases, Case 6.

17. A superintendent of salt works in the employ of Government having entered into an arrangement with the plaintiff, whose *Khelarís* he had taken possession of, on behalf of the

[1] Rescinded by Sec. 2. of Reg. IX. of 1829

Government, to allow him a fixed compensation, which was regularly paid for a period of twenty years, the Court held, that the Government officers in the salt department could not withdraw from the arrangement on the plea that the superintendent had no authority to enter into it. *The Salt Agent at Jessore* v. *Rada Mohun Chowdry*. 22d Dec. 1836. 6 S. D. A. Rep. 135.—Robertson & Hutchinson. (D. C. Smyth dissent.)

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2. *Construction of.*

18. *A*, for a consideration received, engages to effect a release of lands mortgaged by him to *B*, and to make over the same to C, or, in default of his effecting the release of the lands in question, to make over other lands of equal value. *A* fails in effecting the release, and *C* claims other equivalent lands, or (in a supplementary plaint) to recover the consideration. The Court in this case decreed against *A* the principal and interest of the sum advanced by *C*, but no land, the engagement not being sufficiently specific to maintain a claim for land. *Maharajah Grischund Rai* v. *Byhunthpal Chowdree and another*. 24th Feb. 1813. 2 S. D. A. Rep. 48. Fombelle & Stuart.

19. *A* executed an engagement to *B*, undertaking to furnish 250 *Maunds* of silk, at stated periods, and in certain quantities, in consideration of receiving advances from time to time, the whole quantity to be delivered on or before a specified day, or, on failure thereof, subjecting himself to a penalty of one rupee for every *Sér* of silk remaining undelivered. *B* had made one advance only, and *A* had failed in the performance of his contract. On a suit by *B* against *A* to recover the penalty for every *Sér* of silk remaining undelivered, as well as for the balance of silk remaining due on the advance, it was held, that, according to the spirit of the contract, *B* was entitled only to recover the penalty on the non-delivery of silk for which an advance had been made. *Suroopchund Das* v. *Masseyh*. 26th Oct. 1813. 2 S. D. A. Rep. 89.—H. Colebrooke & Fombelle.

20. A contract is not to be extended beyond the intent of the parties, and that is to be gathered from the terms used in it. *Condaswamy Moodely* v. *M'Leod*. Case 7 of 1826. 1 Mad. Dec. 552.—Grant, Cochrane, and Oliver.

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3. *Conditional Agreements.*

21. *A* and *B* purchase property from *C* under condition not to re-sell to any one but *C* or his heirs. Held, that the grant of a *Patni Talook* of a part of the property by *A* and *B* to *D*, a stranger, is a violation of their engagement, and, as such, invalid. *Muddoosoodun Sandial* v. *Pran Kishen Mitter and others*. 1st March 1836. 6 S. D. A. Rep. 56.—Rattray & Stockwell.

22. Where the plaintiff sued for the recovery of a specific sum, conditionally agreed to be paid, by a party to an appeal to the Privy Council, to a house of agency in Calcutta, for their trouble and expenses in carrying on the appeal, the condition being that the sum should be paid if the party were successful, judgment was given in the plaintiff's favour on proof of the fulfilment of the conditions of the agreement. *Rajah Bejai Govind Singh and others* v. *Fullarton*. 27th Feb. 1838. 6 S. D. A. Rep. 222.—Rattray & Money.

23. In an action for real property under a contract between the plaintiff and the defendant, the defendant pleaded the violation by the plaintiff of a separate agreement, on the fulfilment of which the completion of the contract was contingent. The agreement was to have been carried into effect within a specified period, which, however, had been exceeded. The Court overruled the plea, on the ground that the defendant had availed himself of the conditions of the agreement after the expiration of the period

therein specified. *Baboo Juddoonath* v. *Dwarkanath Tagore.* 16th March 1838. 6 S. D. A. Rep. 247.—Tucker, Money, & Reid.

24. A claim preferred by the respondent, to set aside an assignment executed by himself of certain religiously-endowed property, of which he had the management, on the alleged ground of failure on the part of the assignee to abide by the conditions of the assignment, was dismissed for want of proof of the alleged conditions.[1] *Mohunt Sheo Suhye Doss* v. *Mohunt Sookh Deo Doss.* 25th Jan. 1841. 7 S. D. A. Rep. 4.—Tucker & D. C. Smyth.

4. *Illegal Contract.*

25. A claim to ancestral property having been dismissed by the Provincial Court under the Hindú law of inheritance, an appeal was instituted from this decision; and it appearing that the appellant had entered into an agreement with a person to give him up one half of the estate claimed by him if a decree should be passed in his favour, on consideration of that person's advancing the money required for the costs of the suit; it was held, that the transaction was illegal, as savouring strongly of gambling, and the agreement was ordered to be cancelled before the appeal could be admitted. *Ram Gholam Sing* v. *Keerut Sing and others.* 19th Jan. 1825. 4 S. D. A. Rep. 12.—Smith & Martin.

26. An agreement to give up a portion of the property claimed to a person, on condition of his advancing the funds required for the costs of suit, was held to be illegal. *Baboo Brijnerain Singh* v. *Rajah Teknerain Singh.* 29th Sept. 1836. 6 S. D. A. Rep. 131.—Burwell & Stockwell. *Mt. Zuhooroonnissa Khanum* v. *Raseek Lal Mitter and others.* 15th Aug. 1840. 6 S. D. A. Rep. 298.—D. C. Smyth & Tucker.

[1] It may be remarked, that this does not affect the decisions of the Court, which are founded on the established principle that endowed lands cannot be privately alienated. The plaintiff in the present action rested his claim on a certain condition, on failure of proof of which the suit was dismissed; it further appearing that the terms of the assignment did not necessarily involve a diversion of the property from the original purposes of the endowment.

CONTUMACY. — See CRIMINAL LAW, 173 *et seq.*

COODÍWARUM. — See MÍRÁSADÁR, 4.

COOPATAM.—See MÍRÁSADÁR, 5.

COPARCENERS. — See ANCESTRAL ESTATE. 12 *a et seq.*

CORPORAL PUNISHMENT.—See CRIMINAL LAW, 177, 178.

CORRUPTION.

I. GENERALLY.

II. CRIMINAL.—See CRIMINAL LAW, 179 *et seq.*

I. GENERALLY.

1. It was held, that, to establish a charge of corruption or extortion against a native ministerial officer of any Civil or Criminal Court, it was necessary to prove that he had taken an undue reward to influence his behaviour *in his office*, or that by *colour of his office* he had taken from any man a sum of money or thing of value which was not due to him; and where a suit was brought against a Pandit of a Zillah Court for the recovery of the penalty prescribed by Cl. 8. of Sec. 12. of Reg. XII. of

1802[1], on the ground of corruption, the Sudder Dewanny Adawlut adjudged, that inasmuch as the acts of corruption charged against the Pandit were in no wise connected with the duties of his office, it was unnecessary to consider whether or not those acts were proved. *Zillah Judge of North Malabar* v. *The Pandit of the Court of the said Zillah.* Case 11 of 1811. 1 Mad. Dec. 46. — Scott & Greenway.

COSTS.

I. In the Supreme Courts.
1. *Generally*, 1.
2. *In particular proceedings*, 17.
3. *Security for Costs*, 27.
4. *Taxation*, 43.
5. *Bill of Costs.* — *See* Attorney, 5 *et seq.*
6. *On the Crown side of the Court.* — *See* Criminal Law, 45 *c.*

II. In the Courts of the Honourable Company, 49.

I. In the Supreme Courts.

1. *Generally.*

1. In an action for an assault of a very trivial nature, Impey, C. J., said he was inclined to give a judgment for nominal damages, and for the costs of the defendant to be paid by the plaintiff, but he thought it could not be done under the Charter, and therefore would not do it; and judgment was given for the plaintiff, with costs. Hyde, J., inclined to think it might be done, but that this was not a case for doing it, because he did not think it just to say a person shall have no redress by action for a small assault. *Goopeynee Dossee* v. *Gobindram Bysack.* Hyde's Notes. 2d Dec. 1779. Sm. R. 160. Mor. 264.

2. However, it seems the Court would make the plaintiff pay the defendant's costs if the action be a very frivolous one, although the plaintiff may have succeeded on demurrer to a special plea, and must have recovered nominal damages. *Anderson* v. *Russomoy Dutt.* Nov. 1840. Mor. 265, note.

3. A rule to shew cause why proceedings should not be stayed in a suit in equity until the costs in a suit at law, by the defendant against the plaintiff, should be paid by the plaintiff in equity to the defendant in equity, was discharged, with costs. *Radacaunt Ghose* v. *Hurry Ghose.* Hyde's Notes. 2d Feb. 1784. Sm. R. 16.

4. Where an issue had been ordered by the Court to satisfy the doubts of the Bench, not nominally and formally only, but because the difficulty really lay there; it was held, that neither party was entitled to costs, and that it could not be then considered material whether the question had been rightly ordered into a Court of Law. *Mullick* v. *Mullick.* Jan. 1814. East's Notes, Case 4.

5. Proceedings will be staid in a second action, for non-payment of the costs of the first. *Sreemuttee Dossee* v. *Rennell.* 4th Term 1822. Cl. R. 1829. 234.

6. Costs for not proceeding to trial, pursuant to a notice by plaintiff, will not be allowed on the defendant's subsequently moving to postpone the trial. *Meer Ecram Ally* v. *Macnaghten.* Sittings after 2d Term 1823. Cl. R. 1829. 217.

7. Costs of drawing affidavits will not be allowed, although they have been prepared by counsel who had declared them necessary. *Reed* v.

[1] See Reg. VIII. of 1822, which supersedes Reg. II. of 1810, by Sec. 3. of which the Section mentioned in the text was modified, as regards *covenanted* servants. This Section is now applicable to charges in which the Government may not interfere; but it is virtually rescinded by Reg. VIII. of 1822 in all charges, whether against Natives or Europeans, in which the Government may direct an investigation.

Barnes. 3d Term 1823. Cl. R. 1829. 251.

8. Where the hearing stands over for want of parties, the costs of the day will not be allowed, the bill having prayed a discovery of parties, and the answer having stated that no others were interested. *Rajchunder Mozendar* v. *Gooroodas Mozendar.* Sittings after 3d Term 1828. Cl. R. 1829. 331.

9. Costs will not generally be given to either party when the Judges differ in opinion. *Bryce* v. *Smith.* 2d Term 1829. Cl. Ad. R. 1829. 50.

10. The Bench was divided in opinion; and Grey, C. J., stated, that such being the case, costs ought not to be given. Franks and Ryan, Js., held, that costs should be given, the present case being, in their opinion, too clear to bring it within the general rule that costs would not be given where the question was so doubtful that the Court were divided in opinion. *Dookeram* v. *Becoololl.* 12th July 1831. Cl. R. 1834. 36. Mor. 278.

11. And Ryan, C. J., and Seton, J., held, that where a difference of opinion exists on the Bench, there exists *no general rule*, and the costs are in the discretion of the majority of the Court. (Grant, J., dissent.) *Radakissen Mitter* v. *The Bank of Bengal and others.* 2d Aug. 1838 and 1839. Mor. 278, note *c.*

12. Substitution of service of an *allocatur* for costs will be allowed, without interfering with the rule of the King's Bench, which prevails in India, where the defendant kept out of the way, it appearing that he had seen the *allocatur*, and acknowledged the amount. *Barnes* v. *Reed.* 22d March 1830. Cl. R. 1834. 27.

13. Per Grey, C. J.—The Court may, under the 14th Clause of the Charter, award costs between party and party, such as they may think it just that one party should pay to another. The English Statutes as to costs do not apply in India. *Bryce* v. *Smith.* Nov. 1830. Bignell, 62.

14. Costs are discretionary in the Supreme Court; and, exercising its discretion on the merits of the case, costs will be given for opposing in the first instance. *Ramgopaul Mullick* v. *Rajbullub Seal.* 15th Nov. 1833. Cl. R. 1834. 150.

15. A contempt cannot be cleared till after the costs incurred thereby have been paid by the party in contempt. The costs of the contempt need not be tendered till after the motion for clearing it has been made, and a conditional order granted. *Chattoo Sing* v. *Rajkissen Sing and others.* 28th June 1842. 1 Fulton, 27 and 30.

16. Semble, If an application be made on a point not previously raised, should the Court discharge the application, they will do so without costs. *Assignees of Boyd* v. *Maurel.* 31st May 1844. 1 Fulton, 455. *Gibson* v. *Chisholm.* 15th July 1844. 1 Fulton, 480.

16 *a.* Semble, Where an appellant had appealed from the Supreme Court, where he had sued *in formâ pauperis*, without applying for an order to appeal *as a pauper* to the Judicial Committee, he is not liable for the costs of the appeal. *Munni Ram Awasty* v. *Sheo Churn Awasty and another.* 4th Dec. 1846. MS. Notes of P. C. Cases.

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2. *In particular Proceedings.*

17. The Supreme Court cannot give costs of an appeal to the King in Council, even when the Court of Appeal, which confirmed the judgment of the Supreme Court, made no mention of costs.[1] *Gopeymohun Tagore* v. *Ramanund Ghose.* 20th June 1818. East's Notes, Case 83.

18. The King in Council having

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[1] By the 13th and 14th Sections of the Charter, the power of giving costs is confined to suits before the Supreme Court. Sec. 30. directs security to be taken as to costs, "for the performance of such judgment or order as *we* (*i.e.* the King in Council), our heirs or sucessors, shall think fit to give or make thereupon."

dismissed an appeal for want of prosecution, without saying any thing as to the costs, the Court will not allow the plaintiff's costs of the appeal incurred in England or India.[1] *Colvin and others* v. *Compton.* 9th Nov. 1829. Cl. R. 1834. 26.

19. Costs will generally be given in *caveats*, where the parties are able to pay. *In the goods of Collins.* Hyde's Notes. 28th March 1777. Mor. 260.

20. If a man, however, enter an altogether groundless *caveat*, and it be determined in favour of the petitioner, the *caveator* ought to be made to pay costs; but possibly it may sometimes be useful to allow costs to a *caveator*, to encourage such to appear, that the Court may receive information, if they should be about to commit the administration to an improper person. *In the goods of Vancitters.* 23d Jan. 1800. Mor. 260, note.

21. The costs incurred by a party in suing out processes of contempt are not within the terms of Act 25 of 1841, but only the costs attendant upon the motion made for enforcing the former order of the Court. *Alexander* v. *Moran.* 14th Nov. 1842. 1 Fulton, 94.

22. Where a demurrer to a plea in abatement was allowed, without entering into examination of the other objections, on this one alone, that the other partners named in the plea were not averred to be alive and within the jurisdiction; it was held, that the plaintiff was entitled to the costs on the demurrer, by the express words of the Stat. 4th Ann. *Atkinson* v. *Page and others.* 28th March 1798. Chamb. Notes. Sm. R. 161.

23. The costs of a demurrer in equity were directed to stand over until the hearing. *Fairlie* v. *Ferguson.* 3d Term 1829. Cl. A. R. 1829. 54.

24. If a plaintiff in ejectment recover any portion of the premises for which the action was brought, he is entitled to his costs. *Doe dem. Ramtonoo Mookerjee* v. *Beebee Jeenut.* 23d Oct. 1843. 1 Fulton, 256.

25. The costs of an ineffectual notice to justify bail must be paid or secured before the defendant can again appear to justify. *Loll Beharry Sein* v. *Ramchunder Day.* 3d Term 1833. Clarke's Notes, 111. *Ramrutton Chatterjee* v. *Muddosoodun Bonnerjee.* 4th November 1833. *Ib. Gourmohun Paul* v. *Kissenmohun Sain.* 1833. Mor. 280, note. *Bhobumohun Paul* v. *Prankissen Sain.* 5th Oct. 1834. Mor. 280. *Bhobannychurn Paul* v. *Prankissen Sain.* 5th Nov. 1834. Clarke's Notes, 112. *Hume* v. *Stephanouse.* 1st July 1835. *Degumber Chatterjee* v. *Gungagovind Bonnerjee.* 18th Nov. 1835. *Ib. Kullee Angee and others* v. *M'Gibbon.* 26th June 1844. 1 Fulton, 462.

26. If a respondent appear upon a notice served of an intended application to have a petition of appeal received, and merely does not object, his costs will not be given. *Prawnkissen Mitter* v. *Muttysoondery Doxsee.* 18th Nov. 1841. 1 Fulton, 400.

3. *Security for Costs.*

27. A plaintiff not subject to the jurisdiction of the Supreme Court will be required to give security for costs. *Juggomohun Ray* v. *Bancharum Surmono.* Hyde's Notes. 16th March 1784. Mor. 269. *Luckynarain Ghosaul* v. *Rajah Nobkissen.*[2] 22d Oct. 1796. Mor. 142.

28. So where a plaintiff had gone to England. *Howison* v. *Bourke and another.* Hyde's Notes. 12th Nov. 1784. Mor. 269, note.

29. Where the plaintiff is out of the jurisdiction of the Supreme Court, the defendant may move for security

[1] And see *infra*, Pl. 43

[2] In this case the plaintiff was compelled to give the usual security, although he offered to submit to the jurisdiction, and enter into a recognizance to the Registrar.

for costs at any time before issue joined. *Kerim Moonshee* v. *Deen Mahomed.* 16th Jan. 1797. Mor. 241.

30. And it was held, that a native subject of the King, but not a British subject within the meaning of the Charter, residing at the Danish settlement of Serampore, out of the personal reach of the Court's process, must give security for costs on bringing an action in the Supreme Court, although he may have lands in the provinces liable for costs. *Reid* v. *Muttoormohun Sein and another.* East's Notes, Case 77.

31. Held, that the promovent, though resident in the Mofussil, must give security for costs; for though he is not within the local jurisdiction of the Court, he is amenable to an attachment for costs. *Govind Doss* v. *Ramashoy Jemadar and others.* 8th Feb. 1843. 1 Fulton, 155.

32. In an appeal against an order in equity, discharging an order *nisi* for confirming an award, the petition of appeal was granted, and the respondent ordered to give security for the costs only, and not for the sum awarded to be paid by him. *Rajah Ramlochun Roy* v. *Bulram Ghose.* Hyde's Notes and Chamb. Notes, 24th Jan. 1785. Sm. R. 63. Mor. 49.

33. An appellant in whose favour a decree has been made will be ordered to find security for double the sum decreed to him, and the costs in the Supreme Court, as well as for the costs on the appeal. *Bebb* v. *Morgan.* Chamb. Notes, 28th Jan. 1790. Sm. R. 66. Mor. 53.

34. Where an impugnant's petition of appeal shall have been allowed, the promovent will be ordered to give security, not only for the costs upon the appeal, but for the refunding, with interest, the costs of suit received by him from the impugnant, and the payment of the impugnant's taxed costs in the Supreme Court. *Padre Stephanuse Aratom* v. *Sarkies Johannes.* Chamb. Notes, 7th Feb. 1797. Sm. R. 69. Mor. 54.

35. Administrators, complainants in equity, are not bound to give security for the costs of an appeal. (Dunkin, J., diss.) *Grant* v. *Grand.* Chamb. Notes, 13th Feb. 1797. Sm. R. 70. Mor. 55.

36. The rules which are adopted in England as to requiring security for costs, are not invariably applicable, or with the same strictness, to India. *Chaund Beebee and others* v. *Elias.* 12th March 1830. Mor. 310.

37. But where, even though it was sworn that the complainants (*Pardah* females) were within the jurisdiction, and there was an affidavit that they were actually living in Calcutta, the Court, considering the evidence and affidavit to be unsatisfactory, required security for costs from the complainants, and referred it to the Registrar to settle the amount of such security. *Ib.*

38. The appellant should enter into the security for costs, before moving that the petition of appeal should be allowed, and a certificate thereof should form part of the grounds of the rule *nisi.* *Lolljee Mull* v. *Rajchunder Chowdry.* 25th Nov. 1835. Mor. 61.

39. The words in the 30th Section of the Charter, relating to the security to be given for the payment of the costs of the appeal, refer to the appellant alone. *Rogober Dyal* v. *The East-India Company.* 6th Feb. 1843. 1 Fulton, 146.

40. Where collusion and instigation by a third party is proved, security for costs will generally be ordered. *Govind Doss* v. *Ramsahoy Jemadar and others.* 8th Feb. 1843. 1 Fulton, 155.

41. The Supreme Court will not direct an absent plaintiff to find fresh security for costs, unless it be shewn by the defendant that the first sureties are in no way subject to the jurisdiction, and have no property within the jurisdiction of the Court. *Gibson* v. *Chisholm.* 15th July 1844. 1 Fulton, 480.

42. *Quære,* Whether the Court will

direct an absent plaintiff to find such fresh security, even should it be shewn that the first sureties are in no way subject to, and have no property within, the jurisdiction of the Court. *Ib.*

4. *Taxation.*

43. The Supreme Court cannot tax the costs of an appeal to the Privy Council, which, in its decree, reverses the decree of the Supreme Court, and takes no notice of costs. And if costs had been paid under the original decree of the Supreme Court which was reversed, they must be refunded, the whole decree being reversed, including the costs, and no costs having been given by the Privy Council. *Bruce* v. *The East-India Company.* 11th Dec. 1818. East's Notes. Case 92.

44. Where there is a condition to pay costs, it is the duty of the party who has to pay the costs to issue a summons immediately, and get the costs taxed and paid. *Livingstone* v. *Rajnarain Bysack.* 2d Term 1827. Cl. Ad. R. 1829. 45.

45. And the complainant not having done so, he was let in again, on payment of costs, and undertaking to speed the cause. *Lachersteen* v. *Rostan.* 10th April 1831. Cl. R. 1834. 35.

46. True copies of bills of costs had been delivered to the defendant three years before the action was brought, who then stated that he would speak to the plaintiff, and settle the balance. He had never applied to re-tax the bills. It was held, that the Master's *allocatur*, and the promise of the defendant to settle the balance, was sufficient evidence of a retainer; and that the same evidence, coupled with the fact that he had applied for re-taxation during the three years, was sufficient proof of work done. The Court also dispensed with the necessity of delivering the original bills. *Thompson* v. *Radakissen Mullick.* 21st July 1832. Cl. R. 1834. 42.

47. Objections to certain items in a bill of costs taxed between party and party will be allowed, even after attachment had been granted for non-payment of the costs in question, and the costs had been actually paid. *Horner* v. *Voss.* 12th March 1840. Mor. 309.

48. A brief fee to counsel for attendance before a Judge in Chambers upon questions arising upon new rules of pleading will be allowed between party and party where the question is of difficulty, but not upon a question as to striking out one of the common counts. *Ib.*

II. In the Courts of the Honourable Company.

49. Costs were given against Government in a case where the plaintiffs had been irregularly dispossessed of lands, included in the decennial settlement, by the Government, without the sanction of a decree of the Court. *Vakeel of Government* v. *Rajesree Dibia and others.* 30th Aug. 1815. 2 S. D. A. Rep. 156.—Harington & Fombelle.

50. A person suing to raise an attachment can only recover costs to the extent of the interest he might have in making void the process against property so situated: in other words, for the amount of the decree sought to be satisfied out of such property. *Ichhashunkur Sheoshunkur* v. *Mt. Beejeebuhoo.* 22d Feb. 1823. 2 Borr. 469.

51. A *Rázínámeh,* tendered by the appellants in a suit, was held to entitle the respondents to the whole of their costs in appeal, and to interest from the date of the Lower Court's decree. *Mulik Rutun Bhaee and others* v. *Kesa Bhaee and others.* 9th Aug. 1822. 2 Borr. 137.—Romer, Sutherland, Ironside, & Barnard.

52. In a disputed point of costs, in an action referred to arbitration, depending on the construction put upon certain words in the award, the Court, considering the arbitrators to be the best judges of their own meaning, desired them to indorse on the original award their interpretation of the point

in dispute, and decided accordingly. *Brijbhookundas Veerchund* v. *Kuhandas Behchur.* 13th May 1823. 2 Borr. 239.—Sutherland.

53. A surety having made himself responsible for costs and *mesne* profits, provided the Zillah decree should be affirmed by the Court of Appeal, and the latter Court having reversed the Zillah decree, such surety is no longer responsible, though, by the ultimate decision of the Sudder Dewanny Adawlut, it would appear that they should have been discharged by him originally. *Oomaid* v. *Khyrat Ali.* 15th Dec. 1825. 3 S. D. A. Rep. 260, note.—C. Smith.

54. An award greater than the sum sued for being given in the Zillah Court, by a decree which was afterwards reversed in the Provincial Court, the costs in the latter were made payable by the losing party on the sum originally sued for. *Ram Pershad Avustee* v. *Udaroo.* 12th Dec. 1827. 4 S. D. A. Rep. 293.—Sealy.

55. In a suit to raise an attachment from off a house, which should have been levied on the shares of two persons only, it was awarded by the Assistant Judge (Andrews) that the defendant, who levied the attachment, was liable for costs on the amount of his decree only, the remainder to be borne by the plaintiffs; but this decision was amended on appeal, to the extent of relieving the original plaintiffs from all costs, as the attachment ought only to have been levied against the shares of those persons against whom there was the unsatisfied decree. *Mt. Hafizboo and another* v. *Luximeedas Lalldas.* 24th March 1831. Sel. Rep. 48. — Barnard, Anderson, & Baillie.

56. A Superior Court having affirmed the decree of an Inferior Court, with costs, against the appellant, but not until they had required and taken much evidence in addition to what had been taken below; it was held, that they ought not to have given costs against the appellant, and their decree was so far reversed, although affirmed in other respects. *Baboo Ulruck Sing* v. *Beny Persad.* 11th Feb. 1834. 2 Knapp, 265.

57. The Board of Revenue, which had confirmed a revenue sale, afterwards finding it exceptionable and untenable, advised the buyer to abandon it, and warned him that the Board would not defend the action of the ex-owners to set it aside. The buyer persisting in retaining his purchase, the Court, which reversed the sale, charged him, on the suit of the ex-owners, with the costs of the plaintiffs, and only allowed him interest on the purchase money to be refunded up to the day of warning. *Udman Singh and others* v. *The Collector of Zillah Patna and others.* 29th July 1834. 5 S. D. A. Rep. 358.—Braddon & Barwell.

58. Held, that the costs of an attorney of the Supreme Court, incurred by a creditor for making a demand on a resident in the *Mofussil*, who is not amenable to the jurisdiction of the Supreme Court, are not recoverable by action in the *Mofussil* Courts. *Atkinson* v. *Evans.* 30th June 1836. 6 S. D. A. Rep. 75.—Robertson & Stockwell.

59. In a suit brought on behalf of a mercantile firm for an alleged injury, supposed to have been inflicted on the reputation and trade of the firm; it appearing, in the course of the proceedings in the Zillah Court, that the principal had died whilst the suit was pending, the Zillah Court dismissed the suit, and decreed that the defendants should pay their own costs. On an appeal by one of the defendants in the original suit, it was held by the Judicial Committee of the Privy Council, affirming the judgment of the Provincial and Sudder Dewanny Adawlut Courts, that, in accordance with the provisions of Sec. 7. of Reg. II. of 1800[1] of the Bombay Code, the costs of the suit in the Zillah Court ought to have followed the decree, and that the judgment to that extent should be reversed. *Mt. Keemee Baee* v.

[1] Rescinded by Reg. I. of 1827.

Latchman-das Narrain-das. 5th Dec. 1837. 1 Moore Ind. App. 470.

60. In a suit instituted for the purpose of effecting a mutation of names in the Collector's register of landed proprietors, on an apparent collusive understanding between the parties in order to defeat the rights of others, the Court gave judgment *as between the parties*, agreeably to the admission of the defendant; but made all the costs, including those of a claimant who intervened as a third party, chargeable to the plaintiff. *Goluknath Ray Chowdhree* v. *Bhyronath Chowdhree.* 29th March 1842. 7 S. D. A. Rep. 78.—Lee Warner & Reid.

61. Held, that a party appointing a pleader under Sec. 2. of Reg. XII. of 1833[1], but omitting to specify the amount of remuneration settled, as required by Cl. 5. of that Section, cannot recover costs of pleader's fees from the opposite party. *Syud Furzund Allee* v. *Mt. Ghakatee Begum.* 7th Nov. 1842. 7 S. D. A. Rep. 119. —Tucker & Reid.

COUNSEL.—See PRACTICE, 84 *et seq.*

COURT-MARTIAL.—See ARMY, 1 *et seq.*

COURT OF WARDS.

1. *A*, a female, succeeded to a share of a joint estate, managed by the Court of Wards both before and after her succession. She alienated her share to *B*, and repelled his action by pleading her incompetency to alienate without leave of the Court of Wards. The plea was disallowed, because no inquiry, according to Reg. X. of 1793, had been made by the revenue authorities as to her qualification or disqualification. *Jan Khatun* v. *Khwaja Ali Mullah.* 4th Dec. 1832. 5 S. D A. Rep. 240.—H. Shakespear.

[1] Rescinded by Act I. of 1846

2. Semble, That the alienation by any female ward, whom the Governor-General, under Sec. 2. of Reg. X. of 1793, after report, might not declare competent, is invalid. *Ib.*

3. The Court of Wards, on report of its Agent, the managing Collector, caused part of its ward's estate to be sold at public auction, to levy means to satisfy judgment and other debts. The Court of Sudder Dewanny Adawlut ruled that this was within the discretion of the Court of Wards, under Reg. X. of 1793, and that the sale could not be disturbed on grounds applicable to other public sales. *Nand Kumar Ray* v. *Rani Hari Priya and others.* 6th Sept. 1838. 5 S. D. A. Rep. 233. — H. Shakespear & Walpole.

CREDITOR. — See DEBTOR AND CREDITOR, *passim.*

CRIMINAL CONVERSATION.

1. An action of trespass upon the case for criminal conversation is sustainable in the Supreme Court between Hindú parties. *Soodasun Sain* v. *Lochenauth Mullick.* 4th July 1839. Mor. 107.

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[1] N B. The following is merely a selection from the Reports of the Nizamut Adawlut, most of the cases reported involving no point of law or practice.

I. In the Judicial Committee of the Privy Council.

1. There is no power reserved to the Queen in Council by the Charter of Bombay for reviewing a determination of the Supreme Court, when refused by such Court. *In the matter of Alloo Paroo.* 26th June 1847. MS. Notes of P. C. Cases.

1 *a.* The Crown cannot, by the words of the Charter of Bombay, grant an appeal in capital cases. *Ib. In the matter of Eduljee Byramjee.* 26th June 1847. MS. Notes of P. C. Cases.

II. In the Supreme Courts.

1. *Generally.*

2. Trial and acquittal for the same offence in the French Court of Chandernagore may be given in evidence under a plea of "not guilty," and ought not to be pleaded by way of plea *autrefois acquit. Rex* v. *Joseph Rees.* 21st Feb. 1794. Mor. 241.

2 *a.* The Statute making carnal knowledge of a female infant under the age of ten years felony, was held not to extend to India.[1] *Rex* v. *Chundichurn Bose.* Chamb. Notes. 18th July 1794. Mor. 357.

3. *Quære,* whether the Stat. 2d Geo. II. c. 25. s. 3. applies to India? *Rex* v. *Collipersaud Ghose.* Hyde's Notes. 23d Dec. 1786. Mor. 356.

4. It is discretionary in the Court to continue at large on his recognizance a defendant convicted of a misdemeanour, the counsel for the prosecution insisting on his immediate commitment. *The King* v. *Reddy Row and another.* January Sessions, 1809. 2 Str. 7.

[1] This exception seems only to have applied to Natives; but *quære* whether it would have applied to British subjects and others? The Statute 9th Geo. IV. c. 74. s. 65, now applicable to the case, is general, and makes such offence a misdemeanour punishable by imprisonment for such term as the Court shall award, and limits the age to eight years. 1 Sm. & Ry 226.

5 A prisoner not charged in execution in time, is never too late to move to be superseded. *Meer Mahomud Ally Cawn* v. *Mohun Lall.* 24th March 1810. 2 Str. 100.

6. By the 21st Geo. III. c. 70. s. 25. any one intending to prosecute a magistrate for neglect or malfeazance of his office is required to give a month's notice to such magistrate previous to the instituting such proceeding. And where a person moved the Court for the purpose of instituting a criminal prosecution against the Judges of the Sudder Dewanny Adawlut, he was ordered to conform to the rule prescribed by the said Statute. *Anon.* 28th Jan. 1814. East's Notes, Case 7.

7. A prisoner under execution must be brought up by *habeas corpus* to be tried criminally. *The King* v. *Poole.* 1st Sessions 1815. Cl. Ad. R. 1829. 34.

8. Copies of depositions taken at the Police will not be given to the prisoner. But being a complicated and difficult case, indulgence was allowed, and the Court ordered the depositions to be shewn to the defendant's attorney, stating that it must not be understood as a precedent.[1] *The King on the prosecution of Palmer* v. *Warn.* 3d Term 1826. Cl. R. 1829. 196.

9. A trial for perjury was postponed, because the traverser had not given eight days' notice, although the prosecutor had neglected to leave a memorandum with the Clerk of the Crown of the place at which the defendant's notices ought to be served. *Rex* v. *Bungsheedhur Coondoo.* 4th Session 1826. Cl. R. 1829. 186. *Rex* v. *Bhaughbut Dullol. Ib.*

10. A defendant having been convicted of perjury, and fined, the Court, on motion by the prosecutor, directed his expenses to be paid him out of the fine. *The King on the prosecution of Goluckchunder Roy* v. *Oditchurn*

[1] The offence was forgery when that crime was only a misdemeanour.

Paul. 1st Term 1827. Cl. R. 1829. 169.

10 *a.* Held, that describing one of the Commissioners to swear affidavits by the initial letters of his Christian names only, together with the surname, in the Commission, was sufficient. *The King* v. *Wright and others.* 19th June 1827. Cl. R. 1829. 337.

11. Female prisoners, whose religion would not permit them to uncover their faces in public, may be brought into Court and arraigned with their faces covered. But prior to their arraignment their identity must be ascertained by the oath of a credible witness, before whom they can appear without disgrace. *The King* v. *Abassee Khanum.* 8th Aug. 1837. 2 Sm. and Ry. 9, note.

12. In criminal trials the Judge may sometimes see fit to direct the interpreter in Court to translate an untranslated document. *The Queen* v. *Ogilvy.* Aug. 1838. Mor. 268, note.

13. The motion to quash the conviction of a *Mofussil* magistrate must be distinct from that for a remission of the fine. *In the matter of Russell.* 5th Nov. 1838. 1 Fulton, 362.

14. If a British subject be complained of before a *Mofussil* magistrate, the latter must take cognizance of the fact without its being pleaded. *The Queen* v. *Ogilvy.* 11th Jan. 1839. 1 Fulton, 364.

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2. *Indictment.*

15. A Persian writing, to the validity of which delivery is not essential, will be held to be mis-described as a *deed* in an indictment for forgery under the Stat. 2d Geo. II. c. 25. *Rex* v. *Nundeeah Begum and others.* 5th July 1779. Mor. 237.

16. If an indictment for forgery contain two counts, the one for forging, the other for uttering, the instrument must be set out in both; otherwise, if it be set out only in the count for forging, and the prisoner be acquitted on that count, and convicted on the other, judgment will be arrested. *The King* v. *Shadiapen.* 1st May 1800. 1 Str. 62.

17. In this case Strange, Recorder, thought that it was not necessary that the instrument should be set out in the language in which it was written, but that it would be sufficient to insert a translation by the Court interpreter. 1st May 1800. *Ib.*

18. In an indictment for a conspiracy to forge, proof of other similar frauds by the prisoner will not be admitted as evidence to prove the one in question. *The King* v. *Reddy Row and Anunda Row.* Jan. Sessions 1803. 2 Str. 4.

19. If there be two indictments against a man for the same offence, one as a felony, the other laid as a misdemeanour, the prosecutor must elect upon which he will proceed. *The King* v. *Reddy Row and another.* Jan. Sessions 1809. 2 Str. 1.

19 *a.* A statement of the ownership of a ship in an indictment is surplusage where the jurisdiction is otherwise proved, and need not be proved as stated. *Anon.* 10th Dec. 1813. East's Notes, Case 2.

20. It is discretionary with the Court to permit the Clerk of the Crown to attend the Grand Jury with any of the original proceedings out of his office. *The King* v. *Ramdhone Pattuck.* 7th March 1815. Cl. Ad. R. 1829. 35. *The King* v. *Kistodhun Tagore.* 7th March 1815. *Ib.*

21. A prisoner was found guilty of murder on board a ship which was said to be the property of *A*, *B*, and *C*. Counsel on behalf of the prisoner moved in arrest of judgment, on the ground that it was proved at the trial that the interest of *A* in the vessel had ceased previous to the commission of the offence, and that the ship belonged to the remaining two partners. The Court stated that they thought the objection good, but referred the case home. The sentence was afterwards commuted to transportation. *Rex* v. *Appa.* 1825. Clarke's Notes on the 9th Geo. IV. cap. 74. note 14. p. 73

21 *a*. A plea to an indictment for a misdemeanour by a native of Arcot, resident at Serroor, in the dominions of the Péshwa, to the jurisdiction of the Recorder's Court of Bombay, was overruled, on the ground that it amounted to a plea of the general issue, no other Court of competent jurisdiction being stated for the trial of the offence. *Pooneakhoty Moodeliar* v. *The King*. 20th Feb. 1835. 3 Knapp, 348.

22. A Hindú merchant, employed in the Commissariat Department of the Bombay army in camp at Serroor, within the territories of the Péshwa, having forged a receipt upon the East-India Company for charges incurred in the public service, which receipt was transmitted to Bombay, and there entered in the Commissariat accounts, was indicted for the misdemeanour in the Recorder's Court at Bombay. Held by the Judicial Committee, that the uttering the receipt was the completion of the offence, and that therefore the indictment was well laid in Bombay. *Ib.*

23. Semble, The description of the Court of the Recorder of Bombay as the Court of the Honourable the Recorder of Bombay is not a fatal variance in an indictment for a misdemeanour within the jurisdiction. *Ib.*

24. Semble, It is not essential to aver specially that a receipt is a receipt for money, if the instrument on the face of it purports to be such, and is sufficiently set forth in the indictment. *Ib.*

25. *Quære*, Whether indictment for assault and false imprisonment will lie against a Sheriff's officer, who peaceably obtained entrance by the outer door in execution of a bailable writ, and after having been forcibly ejected without having made the actual arrest, obtained assistance, and entered by breaking open the outer door and made the arrest? *Aga Kurboolie Mahomed and others* v. *The Queen*. 17th June 1843. 3 Moore Ind. App. 164.

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3. *Jurisdiction.*

(*a*) *Ordinary.*

26. Indictment for wilful murder. Verbal evidence of being in the service or employ of the East-India Company is sufficient to prove the jurisdiction. *Rex* v *Clarke*. Hyde's Notes. 6th Dec. 1791. Mor. 217.

27. An alien-born, in the military service of the East-India Company, indicted for an offence committed in India, beyond the provinces of Bengal, Behar, and Orissa, under the 26th Geo. III. c. 57. s. 29., was held not to be subject to the jurisdiction of the Supreme Court (Dunkin, J., dissent). *Rex*. v. *Francisco Jose*. Chamb. Notes. 15th Dec. 1797. Mor. 218.

28. The criminal jurisdiction of the Court cannot be founded by inference or intendment. *Ib.*

29. Judgment on a conviction of manslaughter was arrested, the defendant being a German, and this though he was, and had been for many years, a soldier in one of the King's regiments, doing duty at Secunderabad when the homicide was committed. *Rex*. v. *Schomberg*. 4th Sess. 1815. 1 Str. 164, note.

30. A person born in wedlock at Madras, his father being a German, and his mother a Scotchwoman, was declared by the Advocate General to be a British subject, and amenable only to the Supreme Court; but the *onus probandi* as to his birth rests with the prisoner. *Case of Mandeville*. 24th Nov. 1821. 2 N. A. Rep. 111.

31. Upon an appeal to the Privy Council, it was held, that a person resident at Benares, and nowise personally subject to the general jurisdiction of the Supreme Court, is subject to the criminal jurisdiction of such Court in respect of a conspiracy in Calcutta, to which he was privy, though he himself had never actually been within the local limits of the jurisdiction. Where, therefore, a party resident at Benares was indicted with others before the Supreme Court for

a conspiracy in procuring the prosecutor to be arrested in a fictitious action at law, and the instructions for the arrest were proved to the satisfaction of the jury to have originated with the appellant, it was held by the Judicial Committee, that the offence being completed within the jurisdiction of the Supreme Court, that Court had rightly assumed jurisdiction over the parties privy to it, though, from the slight nature of the evidence, they directed a new trial. *Janokee Doss* v. *Rex, on the pros. of Binderbun.* 5th Dec. 1836. Mor. 222. 1 Moore, 67. 1 Moore Ind. App. 67.

32. The Court has no power to remove a conviction by a Zillah Magistrate of a British subject but by the 53d Geo. III. c. 155. *In the matter of Pattle.* Nov. 1836. 1 Fulton, 313.

33. Although under the 21st Geo. III. c. 70. s. 24. the Court has no jurisdiction to entertain a civil action for false imprisonment against a provincial magistrate, acting in his judicial capacity, it seems that a *criminal prosecution for false imprisonment* against a provincial magistrate will be entertained by the Supreme Court. *The Queen* v. *Ogilvy.* Jan. 1839. Mor. 181, note.

(*b*) *To Grant Criminal Informations.*

34. The Supreme Court has the power of granting criminal informations.[1] *Rex* v. *Cock.* Chamb. Notes. 25th Mar. 1791. Mor. 215.

35. It was held that the Court has power, under the words of the Charter and the several Acts of Parliament passed relative to the jurisdiction of the Court, to grant a criminal information out of Sessions. *Rex* v. *Buckingham.* 15th Nov. 1820. East's Notes. Case 21.

36. Per Puller, C. J. "Though a power is given by the Charter to the Judges similar to that possessed by the Court of K. B., and under which it can grant informations and issue certain prerogative writs, such power can only extend to those places and those persons *over whom a jurisdiction had been previously given.*" *Rex* v. *Goculnauth Mullick.* 22d April 1824. Mor. 222, note.

37. Dicta of Grey, C. J. In shewing cause why a criminal information should not issue for obstructing the execution of a *capias ad respondendum*, affidavits cannot be received to shew, nor can it be argued, that the party against whom the writ was directed was not subject to the jurisdiction of the Court at the time the writ was obtained; but it would be necessary to prove at the trial that he was subject to the jurisdiction. The Supreme Court has two criminal jurisdictions in respect of natives, one under Clause XIX. of the Charter as a Court of Oyer and Terminer, the other similar to the Court of K. B. in England in respect to criminal informations. As a Court of Oyer and Terminer, natives could only be tried for offences committed by them within the Mahratta ditch; but the Court has power to grant a criminal information against any person whatsoever residing within the Company's territories (though not otherwise subject to the jurisdiction), in those cases in which the Court of K. B. in England would grant a criminal information against persons residing in England. *Rex* v. *Wright and others.* 19th June 1827. Sm. R. 117. Cl. R. 1829. 330. Mor. 222.

(*c*) *Admiralty, in Crimes Maritime.*

38. It was held, that the Court had no authority to try persons charged with piracy and murder on the high

[1] By the Stat. 53d Geo III c. 155. s. 3 it is expressly provided, that the Advocate General shall be empowered to exhibit *informations* in the Supreme Courts for or on behalf of the Crown, as the Attorney General in England is by law authorised to do. Under this Statute the question has been raised, whether the right of precedence at the bar of the Court can be claimed by the Advocate General *virtute officii*; but the question has never been determined

seas; and this being the case, the Court approved of the Governor-General's intention to issue a warrant, and to send the prisoners to England for trial, unless, on examination, they could fully answer the charges made against them. *Case of O'Donnell and Maclarey.* Hyde's Notes. 10th July 1782. Mor. 212.

39. But this case is contradicted by a dictum of Peel, C. J. The jurisdiction of the Court on its Admiralty side is co-extensive with the Court in England.[1] *Murray* v. *Longford.* 26th Jan. 1843. 1 Fulton, 130.

40. Indictment for kidnapping and selling as slaves. The defendant, the captain of a ship, was a Dane by birth, but had resided in Calcutta before the voyage, and his wife and family resided there while he was absent on the voyage. The ship sailed under British colours. The slaves were purchased at Chandernagore, and sold at Ceylon, and the defendant was in Calcutta when he gave the order to purchase them. The defendant was held to be subject to the jurisdiction. *Rex* v. *Horrebow.* Chamb. Notes. 5th Aug. 1789. Mor. 213.

41. Indictment for an assault with intent to kill, committed at sea. It appears that the Supreme Court has no jurisdiction to try for *murder* where the wound was given at sea, and the death happened at Prince of Wales' Island. *Rex* v. *Storey.* Chamb. Notes. 7th Aug. 1797. Mor. 217.

42. *Quære,* Whether the proof of a claim for head-money is to be made on the Admiralty side of the Supreme Court, or in the Vice-Admiralty Court? and whether the Supreme Court has jurisdiction to hear such proof under the 28th Sec. of the Charter? *H. M.'s Ship Andromache.* 3d Term 1837. 1 Fulton, 71.

43. The Supreme Court at Calcutta has no jurisdiction on its Admiralty side to try aliens for robbery committed on the high seas on board an alien merchant ship in which they were serving. *The King* v. *Agapisto de los Reis and others.* 23d Sept. 1837. 2 Sm. & Ry. App. 90.

44. The Supreme Court of Bombay has jurisdiction under Act XXXI. of 1838 to try, in its Admiralty jurisdiction, offences committed on the high seas by a British subject. *In the matter of Alloo Parroo, on the Petition of his Wives.* 17th June 1845. Perry's Notes. Case 16.

(*d*) *With regard to Appeals.*

45. By the Charter of Bombay, the Supreme Court has full power and absolute authority to allow or deny all appeal in criminal cases. *In the matter of Alloo Parroo.* 26th June 1847. MS. Notes of P. C. cases.

5. *Bail.*

45 *a*. Although a defendant be convicted of a misdemeanour, and the counsel for the prosecution insist upon his immediate commitment, the Court has a discretionary power of allowing him to continue at large on his recognizances. *The King* v. *Reddy Row and another.* 1809. 2 Str. 6.

45 *b*. Where the bail tendered by a defendant indicted for a misdemeanour are disapproved of by the Clerk of the Crown, it is final, and the Supreme Court will listen to no application on the subject. *The Queen* v. *Peer Ally.* 28th Jan. 1840. Mor. 304.

6. *Costs on the Crown side of the Court.*

45 *c*. Costs are never granted upon a motion being refused on the Crown side. *The Queen* v. *Peer Ally.* 28th Jan. 1840. Mor. 304.

[1] And in the fly-leaf of one of the volumes of Sir E. H. East's Notes it is stated as follows: "Sivah was convicted and executed for piracy, June Sessions 1804. Radiah *alias* Sadiah, convicted of larceny on an indictment for piracy in Dec. 1804, on board a prow belonging to subjects of the King, and transported for seven years."

7. *Jury of Matrons.*

45 *d.* It appears that a jury of matrons, to try whether a female prisoner sentenced to death is with child, should be Christian women. *Rex* v. *Peggy.* Hyde's Notes, 20th Dec. 1777. Mor. 260.

III. In the Courts of the Honourable Company.

1. *Abortion.*

46. A prisoner (not being quick with child) was convicted of destroying a *fœtus* in her womb: the Court deemed the punishment of six months' imprisonment, which she had undergone, a sufficient punishment. *Government* v. *Mt. Dhunkoowuree.* 14th Aug. 1826. 2 N. A. Rep. 464.—Leycester & Dorin.

47. It is irregular, under the Court's Circular Orders, for police officers to prosecute an inquiry into a case of abortion, though the case originated in the discovery of a murdered infant, the one case having no connection with the other. *Ib.*

48. A prisoner was charged with procuring abortion, and convicted by the *futwas* of causing the death of her infant by exposure. The Court held this to be a conviction of a greater offence than was charged, and essentially distinct, and sentenced her, for procuring abortion only, to imprisonment for two years. *Government* v. *Mt. Zynd.* 12th July 1827. 3 N. A. Rep. 56.—Leycester & Dorin.

2. *Accidental Homicide.*

49. A prisoner convicted of homicide by misadventure by the law officer of the Court, was released; his confession that he killed the deceased at night, mistaking him for a dog or a jackall, being corroborated by the only witness in the case. *Mt. Rasoo* v. *Mohun Lounda.* 15th March 1821. 2 N. A. Rep. 67.—Leycester.

50. The death of a child, occasioned by the neglect of the person in charge of it, subjects such person to the payment of *Díyat*, as incurred by the commission of *Katl-i-káim makám-ba-khatáa*, or homicide by misadventure. The Court, however, in this case, considering the prisoner guilty of the murder of the child, sentenced her to imprisonment for life. *Government* v. *Mt. Beebun.* 31st March 1819. 1 N. A. Rep. 382.—Fendall & Rees.

51. A prisoner convicted by the law officer of the Court of *Katl-i-khatáa*, in accidentally shooting the deceased whilst firing at a wild hog, and declared liable to *Díyat*, was acquitted and released by the Court. *Government* v. *Rozario.* 11th Jan. 1831. 4 N. A. Rep. 1.—Rattray & Sealy.

3. *Accomplice.*

52. To the conviction of an accomplice in a case of affray, it is not necessary that the principal should be convicted. *Neeloo Aduk* v. *Goor Cowrah.* 7th Feb. 1827. 3 N. A. Rep. 97.—Leycester.

4. *Administering Poisonous or Deleterious Drugs.*

53. Administering a deleterious drug (*dhatúrá*), to the effects of which the death of the deceased is to be attributed, not coming within the fivefold definition of culpable homicide under the Muhammadan law, the prisoner was declared liable to discretionary punishment by *Akúbat*, and imprisoned for life. *Government* v. *Mt. Sookhoo.* 24th July 1800. 1 N. A. Rep. 216.—Harington & Fombelle.

54. The *Futwa* declared that the act of giving poison with a murderous intent to one person, by means of which poison a third person is unintentionally killed, is not, by Muhammadan law, punishable with death. But the Nizamut Adawlut may

inflict capital punishment under the provisions of Cl. 1. of Sec. 10. of Reg. VIII. of 1803 (Sec. 5. of Reg. VIII. of 1799 for the Lower Provinces). Sentence, death. *Government* v. *Mt. Indeea.* 20th Dec. 1813. 1 N. A. Rep. 287. — Fombelle & Rees.

55. A prisoner convicted by the Commissioner of robbery and administering noxious drugs, and sentenced to thirty-nine rattans and fourteen years' imprisonment, with labour. The Court, considering the crime proved against the prisoner to amount to robbery attended with an attempt to poison, and that, in that case, the Commissioner was not competent to pass any other sentence than that prescribed by Cl. 4. of Sec. 8. of Reg. XVII. of 1817, viz. imprisonment in transportation for life, annulled his order as irregular; but being of opinion that thirty-nine rattans and fourteen years' imprisonment with labour was an adequate punishment in the present instance, a sentence to that effect was passed. *Government* v. *Kishen Singh.* 17th May 1830. 3 N. A. Rep. 333.—Ross & Rattray.

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5. *Adultery.*

56. By the Muhammadan law, persons who harbour adulterers are liable to *Akúbat.* *Gooroopershaud Cawora* v. *Ramsoonder and others.* 11th Sept. 1820. 2 N. A. Rep. 42. —C. Smith & Goad.

57. A prisoner was acquitted of the charge of rape, but convicted of the minor offence of adultery, and punished for the same as an offence *contra bonos mores*, and sentenced to imprisonment for one year, with labour. *Mt. Jooee* v. *Bungsee Baooree.* 10th Feb. 1824. 2 N. A. Rep. 317. —C. Smith & J. Shakespear.

58. According to the intent and spirit of Cl. 4. of Sec. 6. of Reg. XVII. of 1817, it is equally requisite that, in charges of adultery, the husband should appear as the prosecutor, whether the person charged be the adulterer or adulteress. *Government* v. *Panchoo and others.* 27th Sept. 1825. 2 N. A. Rep. 421.—C. Smith & H. Shakespear.

59. A complaint having been preferred to a magistrate by an individual against another under Reg. VII. of 1819 for enticing away his wife, with ornaments; the magistrate, instead of trying the complaint, proceeded to commit the prisoners on a charge of adultery. The Nizamut Adawlut quashed the proceedings on the trial, in consequence of such irregular commitment, and because the charge had not been preferred by the husband. *Bhowanee* v. *Sheo Singh and another.* 30th Aug. 1828. 3 N. A. Rep. 177. — Leycester & Turnbull.

60. The Court held, that in a trial for rape the prisoner cannot be convicted of adultery, thus superseding the precedent in the case of Bungsee Baooree, Pl. 56. *Government* v. *Sirdar Shookul and another.* 16th Aug. 1839. 5 N. A. Rep. 140.—Rattray & Reid.

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6. *Affray.*

61. The Muhammadan law makes a distinction between him who is proved to have struck the deceased in an affray, and those present aiding and abetting. The Nizamut Adawlut considered all present equally culpable, and sentenced them accordingly to imprisonment for five years. *Mt. Soondree* v. *Rajoo Gaynee and others.* 30th April 1814. 1 N. A. Rep. 299.—Colebrooke & Fombelle.

62. Resistance shewn by a farmer to persons legally authorized to distrain his effects, was held to be a criminal act, and punishable with imprisonment, notwithstanding the distress may have been levied in an irregular manner; the farmer having it always in his power to obtain redress by application to a court of justice. *Huree*

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[1] This doctrine is superseded by the decision in Pl. 60.

Pershaud Mujmooadar and others v. *Kifayut Mundul and others.* 4th Oct. 1814. 1 N. A. Rep. 302.—Fombelle & Rees.

63. It is no ground for a total remission of sentence that a party engaged in an affray was not the aggressing party; though the Nizamut Adawlut in awarding punishment may admit the circumstance to operate in mitigation. Sentence, two years' imprisonment. *Livingstone and another* v. *Umroodh Thakoor and others.* 1st Nov. 1824. 2 N. A. Rep. 339.—C. Smith & Martin.

64. Affray attended with the murder of a slave. The price of the slave was declared to be due from the *Akila* of the principal offender, and himself liable to *Akúbat*, and the aiders and abettors to *Tazír*. *Mahomed Akber* v. *Hussein Ali and others.* 5th April 1825. 2 N. A. Rep. 381.—C. Smith.

65. The prisoner having been convicted of affray, for which a prisoner formerly tried was sentenced by the Nizamut Adawlut to thirty corahs and fourteen years' imprisonment, the Judge of Circuit proposed to sentence him to the same punishment; but the Court, deeming the prisoner entitled to the benefit of Sec. 7. of Reg. XII. of 1825, sent back the trial for the Judge to pass sentence. *Government* v. *Kooshee Rai.* 7th March 1828. 3 N. A. Rep. 107.—Leycester & Sealy.

66. On a conviction of affray, attended with wounding, the Court, adverting to the respectability of one of the ringleaders, remitted imprisonment, and sentenced the parties to pay fines according to their respective degrees of guilt. *Government* v. *Momin and others.* 2d May 1828. 3 N. A. Rep. 141.—Sealy & Rattray.

67. Held, that the discrepancy of the evidence of the parties in an affray affords no ground for the acquittal of those charged: credit must be given to that which appears best supported by the circumstances of the case. Sentence, imprisonment for five years. *Ronsun Pardhun* v. *Ruggoo Dhobey and others.* 22d April 1829. 3 N. A. Rep. 221.—Leycester & Rattray.

68. The evidence for the prosecution went to prove that the brother of one of the prosecutors had been murdered by the prisoners; but the surgeon reporting that death had been occasioned by submersion, and that the deceased had been long blind, the prisoners were convicted of affray attended with the wounding of one of the prosecutors, and sentenced accordingly. *Ramjewun Race and others* v. *Bullabee Kotal and others.* 28th Aug. 1829. 3 N. A. Rep. 273.—Rattray & Turnbull.

69. In a case where an affray was the consequence of an attachment of property made by a peon under the order of a Moonsiff, the Court held, that the officer serving the process is not necessarily bound to exhibit the warrant upon which he acted, if no demand be made to such effect. *Alapoo* v. *Hamood and others.* 31st Aug. 1833. 4 N. A. Rep. 251.—H. Shakespear, Rattray, & Walpole.

70. In a case of affray, in which a reference was made to the Nizamut Adawlut under the provisions of Sec. 3. of Reg. II. of 1823, for mitigation, in regard to one party, of the minimum punishment which the Session Judge is competent to pass under Sec. 2. of that Regulation; it was held, that the affray was not one of the nature contemplated by Reg. II. of 1823, as explained by Reg. VI. of 1828, and would have returned the case to be disposed of by the Session Judge. But an appeal having been lodged, the Court disposed of the trial in regard to one party, by directing their acquittal, and instructed the Session Judge to pass sentence on the rest of the prisoners. *Government* v. *Durpnarain Christian and others and Rajchunder and others.* 8th Sept. 1837. 5 N. A. Rep. 73.—Harding & Hutchinson.

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7. *Appeals.*

71. Sec 5. of Reg. III. of 1821 is

construed as intended to limit the period of appeal, merely as relates to appellants, without restricting the discretionary authority of supervision possessed by the Superior Courts. *Government* v. *Himmut and another.* 10th Dec. 1822. 2 N. A. Rep. 221.

72. Held, that it is not necessary for a Court of Circuit to furnish a magistrate with a copy of a petition of appeal against his proceedings, though a copy of the order passed in appeal should be furnished. *Ib.*

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8. *Arson.*

73. The *Futwa* of the Circuit Court found that the prisoner set fire to his own house, but declared him liable to no punishment as he warned the people to remove their goods, so that no injury occurred to any one. The Circuit Judge, however, convicted him of arson, and sentenced him to be imprisoned for one year without labour or irons. The Court, calling for the case, annulled the sentence as illegal, as the Circuit Judge differing from his law officer could not pass sentence; but, convicting the prisoner of the crime charged, sentenced him to the same punishment. *Government* v. *Nundee.* 30th April 1829. 3 N. A. Rep. 231.—Leycester & Turnbull.

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9. *Assault.*

74. A *Barkandáz*, in a quarrel with the *Dáróghah*, fetched his blunderbuss (not proved to be loaded) with which he threatened to shoot him. The Court, deeming him guilty of violent and insubordinate behaviour towards his superior officer, and not being satisfied that his intent was murderous, sentenced him to be imprisoned without labour or irons for six months. *Government* v. *Tegh Ali Khan.* 4th June 1825. 2 N. A. Rep. 402.—C. Smith & Scaly.

75. A *Jamadár* of a battalion, eight sepoys, and a peon, having been convicted by the law officer of assaulting the dwelling-house of a *Zamíndár*, wounding him and another with musket balls, and severely beating a third person with clubs, the Circuit Judge concurred in the conviction, but referred the trial to the Nizamut Adawlut on a doubt whether the sepoys were not justified, they having acted under the orders of the *Jamadár*, their superior officer. The Court returned the proceedings, informing the Circuit Judge, that though the fact noted might operate in mitigation of punishment, it could not justify a gross infraction of the peace, where the criminality was obvious, and directed him to pass sentence. *Bhowanny Pershaud and another* v. *Moonowur and others.* 28th April 1828. 3 N. A. Rep. 128.—Leycester & Turnbull.

76. A prisoner was convicted of attempting to stab the magistrate with a dagger, and sentenced by the Circuit Judge to imprisonment for five years; but the Judge referring the case for enhancement of punishment, the Court confirmed the sentence, with reference to the illegal act of disarming the prisoner of his weapons, which had been ordered by the magistrate, and caused the attempt. *Government* v. *Fyzoollah Khan.* 24th Oct. 1828. 3 N. A. Rep. 196. —Leycester & Rattray.

77. The prisoners were convicted and sentenced by the Commissioner to five years' imprisonment for an aggravated assault, attended with wounding, plundering, and abduction, but acquitted by the Nizamut Adawlut on a revision of the proceedings; the Court, with reference to the improbable nature of the charge, and the discrepancies in the depositions of some of the witnesses, deeming the evidence insufficient for conviction. *Akbur Ali* v. *Mohun Chunder Battoorjeah and another.* 12th June 1831. 4 N. A. Rep. 41.—Ross & Turnbull.

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10. *Bail.*

78. When a prisoner on bail has not been apprehended until some time

after the date of the sentence, a special report should be made to the Nizamut Adawlut, through the Court of Circuit, for their orders, as to the date from which the sentence should commence. *Roopun Rai* v. *Juglall and others.* 6th July 1827. 3 N. A. Rep. 49.

79. At the termination of a trial by a Session Judge, the Commissioner of Circuit is not competent, under any circumstances, to direct that the prisoner shall be held to bail pending the reference to the Nizamut Adawlut. But the Session Judge, under Secs. 5. and 6. of Reg. VII. of 1831, possessing the same powers in the trial of commitments to his Court as had been confided to the Commissioner before that enactment, is competent to pass that order. *Government* v. *Alexander.* 26th Nov. 1834. 4 N. A. Rep. 332. — H. Shakespear & Rattray.

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11. *Burglary.*

80. The prisoners were convicted of burglary with wounding, having been detected in the act of undermining the wall of a dwelling-house at night before they had effected an entry, and one of them having wounded the person who apprehended him. Sentence, thirty-nine korahs and imprisonment in banishment for fourteen years. *Mirza Badul Beg and another* v. *Choonee Caundoo and another.* 30th July 1812. 1 N. A. Rep. 243.—Burgess & Rees.

81. If a thief break through the wall of a house, and, entering therein, take the property of another, and deliver it to an accomplice standing at the entrance of the breach, the specific penalty of *Hadd* prescribed by the Muhammadan law for larceny without open violence (*Sarakah-i-sogra*) is not incurred by either of the parties. Sentence, twenty-five korahs and imprisonment in banishment for fourteen years. *Poorun* v. *Munghraw and another.* 6th Feb. 1813. 1 N. A. Rep. 250.—Fombelle & Rees.

82. Entering a dwelling-house with intent to rob, by lifting a door off its hinges, is burglary agreeably to the provisions of Cl. 2. of Sec. 2. of Reg. I. of 1811; also, an entry by loosening and lifting a *chopper* or straw thatch of a house; but not an entry by a door left open, or by climbing over an outer wall, unless followed by a burglarious entry into the house. *Beharee Sahoo* v. *Gunga Bishen.* 19th June 1813. 1 N. A. Rep. 270. — Colebrooke & Fombelle.

83. The prisoners were convicted of breaking into a cow-house which adjoined a dwelling-house, and was situated in the same enclosure, and stealing cattle from the same. This was held not to be burglary as defined in Cl. 2. of Sec. 2. of Reg. I. of 1811. Sentence, twenty stripes and imprisonment for seven years. *Bazeed* v. *Sheebratoo and others.* 13th Dec. 1813. 1 N. A. Rep. 286.—Fombelle & Rees.

84. In trials for burglary attended with violence by a gang of more than three armed persons, it should always be specified in the charge, whether the violence was simultaneous with, or subsequent to, the entry; as in the former case the crime is that of *Dacoity,* as defined in Cl. 1. of Sec. 3. of Reg. LIII. of 1803. *Mt. Chumpa* v. *Mudden Jena.* 22d Aug. 1829. 3 N. A. Rep. 271.—Leycester & Ross.

85. Of several prisoners, No. 1 was convicted of burglary and theft in the prosecutor's house, and taking the prosecutor's daughter out of the house, and, after taking her ornaments, throwing her down in a garden, and thereby endangering her life; No. 2, of receiving part of the stolen property, knowing it to have been stolen; No. 3, of privity to the theft; and No. 4, acquitted. With reference to a doubt of the Session Judge, he was informed that this being a case of burglary, attended with corporal injury in such a degree as to endanger life, was necessarily referrible under Cl. 4. of Sec. 8. of Reg. XVII. of 1817.[1] Sentence, No. 1, imprison-

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[1] Modified by Sec. 2. of Reg. XV. of 1825.

ment for ten years; No. 2, for seven years; No. 3, for three years; all with labour in irons. *Jyekishen Mehtee* v. *Needhee Mullick and others.* 15th March 1834. 4 N. A. Rep. 284.—H. Shakespear.

86. Two prisoners burglariously entered the house of a person and stole his property: the owner of the house awoke, and, pursuing the thieves, met his death at the hand of one, who, on conviction, was sentenced to suffer death. Sentence, No. 1, death, and No. 2, imprisonment with hard labour for fourteen years. *Mt. Gadle* v. *Pohoo Khowa and another.* 13th June 1836. 5 N. A. Rep. 23.—Halhed & D. C. Smyth.

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12. *Childstealing.*

87. Prisoners charged with stealing a child, of whom no trace could afterwards be discovered, were declared by the law officers to be liable to imprisonment until they restored the missing child; but the Nizamut Adawlut sentenced them to a definite period of imprisonment, there being no reason to suppose that the child had been murdered. *Khutela* v. *Mt. Munna and others.* 5th March 1821. 2 N. A. Rep. 66.—C. Smith & Goad.

88. The Circuit Judge referred the trial of the prisoner, whom he convicted of inveigling away a girl of about six years of age, because he doubted his competency to sentence him to a specific punishment of four years, and to a further period of three years, conditional on his giving such information as might lead to the recovery of the missing girl. The Court, being of opinion that it was competent to the Circuit Judge to pass the proposed sentence, returned the trial to him, with directions to dispose of it in the usual manner. *Government* v. *Dursun.* 31st Jan. 1826. 2 N. A Rep. 447.—C. Smith & Dorin.

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13. *Coin, counterfeiting the.*

89. To a conviction of forgery it is not necessary that the coins forged should be base metal, or that the imitation be of a coin which is a legal tender, provided it be current among the natives. Sentence, imprisonment for three years with labour and irons. *Government* v. *Phudalee and another.* 23d May 1822. 2 N. A. Rep. 177.—C. Smith & J. Shakespear.

90. A prisoner was charged with possessing counterfeit coin, and acquitted, it being held that the provisions of Sec. 11. of Reg. XVII. of 1817 are not applicable to a carrier of counterfeit coin for another, it being presumed he was ignorant of their nature. *Government* v. *Chopa Aheer.* 16th July 1827. 3 N. A. Rep. 58.—Leycester & Dorin.

91. To establish the charge of counterfeiting coin, it is not necessary that the criminal should be detected in the act of forgery. The prisoner was convicted of having in his possession counterfeit pice, and an earthen mould, with other implements for fabricating the same, under circumstances indicating that the latter had been recently used in forging spurious pice, and he was sentenced to imprisonment for two years with labour in irons. *Government* v. *Hassun Buksh.* 31st Oct. 1831. 4 N. A. Rep. 95.—Ross & Turnbull.

92. A prisoner was convicted of forging coin, and recommended by the Commissioner as a proper object of mercy, he being seventy-two years old, and of weak intellect, and possibly the dupe of other scheming relations, who escaped, with an opinion that imprisonment for six months would answer the ends of justice. The Court held, that age and infirmity were insufficient grounds for mitigation to the extent proposed, but reduced the sentence from seven years, to three years' imprisonment without labour or irons. *Government* v. *Radhakant Kamar.* 10th Sept. 1832. 4 N. A. Rep. 174.—H. Shakespear & Rattray.

93. Held, that having in possession instruments of coining, with the intent to forge the current coin, is a punishable offence. The prisoners were convicted of this offence, and No. 1 being an old offender was sentenced to a more severe punishment than the others. Sentence, No. 1, imprisonment with labour and irons for seven years; Nos. 2 and 3 for three years without labour or irons, and a fine of Rs. 50 each, commutable to labour. *Government* v. *Pran Kamar and others.* 24th April 1840. 5 N. A. Rep. 171.—Reid.

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14. *Commitment.*

94. A charge of corruption made before a magistrate not having been established, the magistrate is authorized to commit the accuser to take his trial for perjury at the instance of the party accused, should he find sufficient grounds for so doing. And the commitment is not illegal, though made pending an appeal from the decision of the magistrate, preferred by the original accuser to the Court of Circuit. With a view, however, to avoid conflicting decisions, it was considered advisable to postpone the trial for perjury, until the appealed case was disposed of; the question of the prisoner's being innocent or guilty of the alleged perjury resting on the truth or falsehood of the original charge. *Byjnauth* v. *Hingoo Laul and another.* 16th May 1813. 1 N. A. Rep. 263.

95. A magistrate is authorized to commit all parties in a fatal duel, to take their trial for murder; and it is not requisite to authorize the commitment, that a case should be made by a private prosecutor. *Government* v. *Beaufort and others.* 7th Aug. 1813. 1 N. A. Rep. 277.—Colebrooke, Fombelle, & Stuart.

96. The prisoner having admitted before the *Maulavi* that he had perjured himself in the Court of the Register, was sent by the *Maulavi* to the magistrate, and committed by the latter officer to stand his trial for perjury. Held, that the proceeding was irregular, and that the commitment should have been made at the instance of the Court in which the perjury was committed. The proceedings of the Circuit Court were annulled, and the prisoner held to bail to answer the charge of perjury, if brought before the Judge on any report which the Register might make to him in conformity with Cl. 2. of Sec. 14. of Reg. XVII. of 1817. *Government* v. *Ramjee Rai.* 3d Oct. 1822. 2 N. A. Rep. 208.—Goad & Dorin.

97. It is not competent to a magistrate, without reference to the Nizamut Adawlut, to commit individuals to take their trial, for whom he had obtained a conditional pardon from that Court; but he having done so, it is competent to the Judge of Circuit to renew the offer of pardon. *Mt. Panee* v. *Urjoon Biswal and others.* 17th Sept. 1823. 2 N. A. Rep. 289.—C. Smith, Leycester, & J. Shakespear.

98. When one prisoner is committed for trial, all implicated in the same case should be committed also. *Punchuma* v. *Dowlut.* 24th May 1824. 2 N. A. Rep. 396.—C. Smith & Sealy.

99. The Court, having annulled the proceedings on a trial, in consequence of its having been held without the previous permission of Government for the commitment (the offence having been committed in a foreign territory), and ordered the recommitment after the necessary permission had been obtained, did not deem it necessary to direct that those persons should be re-committed against whom there was no sufficient evidence, and who would have been acquitted had the trial been legal. *Chynsookh* v. *Umra Lodh and others.* 18th May 1825. 2 N. A. Rep. 393.—C. Smith & Sealy.

100. In a case of theft attended with murder, the magistrate commit-

VOL. I.] [PART II.

AN

ANALYTICAL DIGEST

OF ALL

THE REPORTED CASES

DECIDED IN THE

SUPREME COURTS OF JUDICATURE IN INDIA,

IN THE

COURTS OF THE HON. EAST-INDIA COMPANY,

AND ON APPEAL FROM INDIA,

BY HER MAJESTY IN COUNCIL.

TOGETHER WITH AN INTRODUCTION,

NOTES, ILLUSTRATIVE AND EXPLANATORY, AND AN APPENDIX.

BY

WILLIAM H. MORLEY,

OF THE MIDDLE TEMPLE, ESQUIRE, BARRISTER-AT-LAW,

MEMBER OF THE ROYAL ASIATIC SOCIETY, AND OF THE ASIATIC SOCIETY OF PARIS.

"IF IT BE ASKED HOW THE LAW SHALL BE ASCERTAINED WHEN PARTICULAR CASES ARE NOT PRESUMED UNDER ANY OF THE GENERAL RULES, THE ANSWER IS THIS; THAT WHICH WELL-INSTRUCTED BRAHMANS PROFOUND SHALL BE HELD INCONTESTABLE LAW."

MENU, B. xii. v. 108.

IN TWO VOLUMES.

VOL. I.

CONTAINING AN INTRODUCTION, AND THE DIGEST OF CASES.

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"THE DOCTRINE OF THE LAW THEN IS THIS: THAT PRECEDENTS AND RULES MUST BE FOLLOWED, UNLESS FLATLY ABSURD AND UNJUST: FOR THOUGH THEIR REASON BE NOT OBVIOUS AT FIRST VIEW, YET WE OWE SUCH A DEFERENCE TO FORMER TIMES AS NOT TO SUPPOSE THAT THEY ACTED WHOLLY WITHOUT CONSIDERATION. UPON THE WHOLE, WE MAY TAKE IT AS A GENERAL RULE, 'THAT THE DECISIONS OF THE COURTS OF JUSTICE ARE THE EVIDENCE OF WHAT IS COMMON LAW,' IN THE SAME MANNER AS, IN THE CIVIL LAW, WHAT THE EMPEROR HAD ONCE DETERMINED WAS TO SERVE FOR A GUIDE FOR THE FUTURE."

Blackstone's Commentaries, Introd. Sec.

ted one of the persons concerned on the simple charge of theft, absolving him from participation in the murder; and in another case of theft attended with burglary, committed on the same night, in which the same individual was concerned, he made no commitment, but appended his proceedings to the former case. The Court, deeming the whole of these proceedings irregular, quashed them; and directed that the prisoner should be committed on the whole of the first, and also on the second charge. They also informed the Circuit Judge that he should have quashed the commitment, with the concurrence of one of his colleagues. *Bhowanee* v. *Illahya.* 3d June 1826. 2 N. A. Rep. 457.—Leycester & Ross.

101. The Court ruled that a magistrate cannot commit on a charge of "Murder while in a state of insanity;" the wording of the commitment being erroneous and absurd, taken as a criminal charge, and the magistrate not being competent to determine the question of sanity or otherwise. *Government* v. *Kulloo.* 19th July 1827. 3 N. A. Rep. 60.—C. Smith & Dorin.

102. A single Judge of Circuit having directed the commitment of an individual who had been released by the magistrate, he being incompetent to pass such an order without the concurrence of one of his colleagues, the majority of the Nizamut Adawlut were of opinion that they could not confirm this irregular order, and annulled it accordingly. A Session Judge possessing the full power heretofore vested in the Court of Circuit collectively, may pass an order for commitment. *Mudaree* v. *Kulloo.* 31st May 1827. 3 N. A. Rep. 73.—Leycester, Sealy, & Dorin.

103. Held, that a single Judge of Circuit is not competent to direct the re-apprehension and commitment of a prisoner who had been discharged by the magistrate, unless on new and distinct grounds; and a trial which had thus irregularly originated, was quashed by the Nizamut Adawlut. *Sahib Lal* v. *Sumbhoo Deb.* 27th March 1828. 3 N. A. Rep. 120.—Leycester & Sealy.

104. A complaint having been preferred to a magistrate by an individual, under Reg. VII. of 1819, for enticing away his wife with her ornaments, the magistrate was not competent to commit for adultery; and the Nizamut Adawlut quashed a trial held in consequence of such commitment. *Bhowanee* v. *Sheo Singh and another.* 30th Aug. 1829. 3 N. A. Rep. 177.—Leycester & Turnbull.

105. A commitment by a magistrate for forgery and perjury in a civil suit, without reference to the Civil Court, was declared illegal and void; the provisions of Reg. III. of 1801 being considered applicable to charges of forgery preferred by parties in civil suits against their opponents. *Government* v. *Bungsee Dhur Chowdree and others.* 1828. 3 N. A. Rep. 203.—Leycester & Sealy.

106. Under Sec. 14. of Reg. XVII. of 1817, the Judge only is competent to commit for perjury committed before himself. The commitment having been made by the magistrate, under such circumstances, vitiates the trial. *Government* v. *Neeamut Oollah and another.* 20th Nov. 1829. 3 N. A. Rep. 290.—Leycester & Turnbull

107. Held, that as no charge had been preferred against her by her husband, the commitment of a female prisoner (who died before the close of the trial) for adultery, was improper under Reg. XVII. of 1817. *Sheikh Rumzaun* v. *Ruheem Oollah and another.* 10th Feb. 1830. 3 N. A. Rep. 298.—Sealy & Rattray.

108. A prisoner acquitted on a charge of murder, appearing to have knowingly received property obtained by robbery, the Court directed that he should be committed and brought to trial on that charge. *Choonee Lal* v. *Kuchoowa and others.* 7th May 1831. 4 N. A. Rep. 32.—Ross & H. Shakespear.

109. In a case in which three prisoners were originally committed for

trial, the Session Judge annulled the commitment and directed further inquiry. The magistrate, having completed the inquiry, released two of the prisoners, and re-committed the third. Held, that this was irregular in the Session Judge, and that the prisoners, who had been committed, should be tried, and a sentence of acquittal passed upon them, in the event of deficiency of evidence to convict. *Mt. Pearee Munee Bustomee* v. *Mt. Lalmunee Bustomee.* 25th March 1839. 5 N.A. Rep. 116.—Reid.

110. A charge of assault having been preferred by certain parties against each other, the magistrate committed both for affray in one case. The Session Judge, after taking the evidence for the prosecution, returned the proceedings to the magistrate, with instructions to make two separate commitments on the charge and counter-charge preferred by the opposing parties. The magistrate, in carrying these orders into effect, took the evidence of one of the prisoners first committed, and omitted his name in the list of prisoners on the subsequent commitments, and sent him up to the Sessions Court as a witness, without its calling forth any remark from the Session Judge. Held, that a sentence of acquittal or conviction should have been passed upon every prisoner committed. *Government* v. *Joy Chaund and others.* 14th Oct. 1839. 5 N. A. Rep. 145.—Tucker.

111. On the trial of a *Moonsiff*, charged with corruption, it appeared that the Civil Judge conducted the whole of the preliminary inquiry on the commitment, leaving it to the magistrate only to submit the proceedings to the Sessions Court. Held, by the Court, that the Judge should have confined himself to a preliminary inquiry, and have ordered the Government Pleader to prefer a charge of corruption before the magistrate. They quashed the proceedings, and directed the Judge to follow the course above indicated. *Government* v. *Abool. Hussen.* 20th Dec. 1839. 5 N. A. Rep. 151.—Court at large.

112. The Session Judge having annulled the commitment of certain prisoners on a charge of affray, directed the re-commitment of one party on the charge of assault and homicide, and the admission of the other party as evidence against them, under the provisions of Reg. X. of 1824. Held, that the Regulation cited was not applicable to the case, affray not being enumerated in Cl. 1. of Sec. 2. of Reg. X. of 1824, as one of the offences which the magistrate is authorized to tender a pardon to the persons concerned in. Held, also, that the Session Judge should not have finally disposed of the prisoners admitted as evidence, without formally passing upon them a sentence of acquittal; and, further, that the misapplication of the Regulation by the Session Judge did not vitiate the proceedings on the last commitment. *Manoollah* v. *Khateer Chowkeedar and others.* 29th Aug. 1840. 5 N. A. Rep. 173.—Leycester & D. C. Smyth.

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15. *Compulsion, Homicide by.*

113. The prisoner having killed the deceased by order of his master, and under fear of immediate death in case of refusal, the *Futwas* declared that he was not liable to *Kisás*, and should be released. The Court accordingly directed his immediate release.[1] *Boodhun* v. *Ratra.* 30th Jan. 1806. 1 N. A. Rep. 101.—Harington & Fombelle.

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[1] Homicide by compulsion (*Kirah*), under menaces which induce a fear of death, is not strictly justifiable under Muhammadan law; but the penalty of *Kisás*, according to the doctrine of Abú Hanífah and Muhammad, is transferred to the compeller; and the compelled person is considered rather the instrument than the author of the homicide, yet not altogether free from criminality, as the act is unlawful, and subject to discretionary punishment, if the circumstances of the case may appear to require it.

16. *Concealment of Murder.*

114. Concealment of murder is, under the Muhammadan law, punishable at discretion. *Poonirja* v. *Fyzoo.* 10th Jan. 1805. 1 N. A. Rep. 2.

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17. *Confessions.*

115. The only evidence against the prisoner, charged with murder, being his own confessions, in which he stated that he killed the deceased in self defence, after having committed adultery with the deceased's wife, the plea was admitted in mitigation, and the prisoner sentenced to imprisonment for two years. *Government* v. *Dhununjee.* 9th July 1805. 1 N. A. Rep. 39.—Harington and Fombelle.

116. The prisoner, charged with the murder of his concubine, confessed that he killed her from irritation at abusive language and kicks. But his acknowledged continuance for nearly an hour in the act of strangling the deceased, appeared to take the case altogether out of the predicament of homicide on sudden provocation, and to evince deliberation and malice, such as distinguish the crime of murder. Sentence, death. *Shirkut Ullah* v. *Sona Ghazee.* 14th Sept. 1805. 1 N. A. Rep. 60.—H. Colebrooke & Harington.

117. The Court admitted the confession of No. 1 (on the trial of the prisoners for the murder of her husband), corroborated by other evidence, though it appeared that the police *Dárógha* had irregularly and improperly held out hopes of impunity as an inducement to the prisoner to confess. The Court directed that the *Dárógha* should be reprimanded, and admonished not to repeat such means of obtaining confession. Sentence, death. *Government* v. *Mt. Luckhnee and others.* 12th Nov. 1805. 1 N. A. Rep. 81.—H. Colebrooke & Harington.

118. The prisoner was convicted on his own confession of being an accomplice in robbery and murder; but the confession, the only evidence against him, having been made without promise or inducement to confess, apparently with a view to a pardon on conviction of accomplices, the Court did not think fit to reject it, but admitted it, with his voluntary surrender, and his not appearing to have been actually concerned in murder, in mitigation of a capital sentence. *Government* v. *Tukee and others.* 28th Jan. 1806. 1 N. A. Rep. 98.—H. Colebrooke & Fombelle.

119. On a charge of murder, the only direct proof being the confession of one of the prisoners, implicating the other two; and that confession appearing to have been extorted by the police by intimidation and blows, it was considered inadmissible, and the prisoners were acquitted. *Jan Moohummud* v. *Deanut and others.* 24th April 1806. 1 N. A. Rep. 104.—Harington & Fombelle.

120. On a charge of murder of his wife, the only evidence against the prisoner being his own confession, in which he declared that he had no intention of killing the deceased, his offence was held to amount to culpable homicide, and he was sentenced to imprisonment for five years *Government* v. *Shaikh Mungal.* 12th Aug. 1806. 1 N. A. Rep. 110. —H. Colebrooke & Fombelle.

121. The only evidence against the prisoner being his own confession, which contained a legal justification of the homicide (that he killed his wife and her paramour in the act of adultery), the Court held that the whole confession must be taken as it stood, and accordingly acquitted the prisoner. *Government* v. *Thundee.* 4th Dec. 1806. 1 N. A. Rep. 130. —Harington & Fombelle.

122. The prisoner was acquitted on the charge of murdering his infant child, the only evidence against him being his own confession, which he subsequently stated to be untrue and obtained by violence, and there being no proof of the birth of the

child. *Government* v. *Munee Ram.* 21st April 1807. 1 N. A. Rep. 143. —H. Colebrooke & Fombelle.

123. Where a man confessed a homicide, and in his different statements assigned various pleas of justification, and there being presumptive proof that the homicide was malicious, it was held to be murder. The prisoner was, under such circumstances, convicted of murder, and sentenced to capital punishment. *Mt. Mughnee* v. *Ohariya.* 28th April 1807. 1 N. A. Rep. 144.—Harington & Fombelle.

124. The prisoner confessed that he killed the deceased while in the attempt to commit adultery with his (the prisoner's) wife. The homicide was considered justifiable, and the prisoner released. *Mt. Bhooeen* v. *Rooder.* 30th July 1807. 1 N. A. Rep. 156.—Harington & Fombelle.

125. The prisoner confessed that he had unintentionally killed the deceased with a blow; but the marks and scratches on the throat of the deceased, and the concealment of the ornaments of the deceased by the prisoner, afforded strong presumption that the homicide was wilfully committed by strangulation. The prisoner was therefore convicted of murder and sentenced to death. *Bhugut Ram* v. *Akil Mahomed.* 24th Dec. 1807. 1 N. A. Rep. 16.—Harington & Fombelle.

126. When there is no evidence against the acknowledger of an act, but his own confession, by *Istihsan*, or an approved construction of the law, he is not required to prove any exculpatory plea which such confession may involve. The prisoner was found to be insane, and acquitted. *Government* v. *Pran.* 12th May 1809. 1 N. A. Rep. 192.—Fombelle

127. The prisoner having confessed that he killed the deceased while in the act of violating his patron's wife, the homicide was held to be justifiable, and he was acquitted. *Munsaram Rajpoot* v. *Muna and others.* 22d July 1812. 1 N. A. Rep. 240.—Burgess.

128. A confession made by a prisoner, after having been promised his release by a police officer, is not entitled to any credit. The prisoner was, under such circumstances, acquitted. *Bikao* v. *Anoop Dosad.* 17th Feb. 1813. 1 N. A. Rep. 251. —Fombelle & Rees.

129. It is not regular to convict a prisoner of an offence solely on his own confession; but evidence must, under Sec. 6. of Reg. IX. of 1793, be taken as to the actual commission of the crime with which he is charged. *Kheree* v. *Duleep Pasban.* 12th March 1813. 1 N. A. Rep. 255.—Fombelle & Rees.

130. The deposition of a witness to the confession of a prisoner cannot be received in evidence against him, unless it be taken in his presence. *Government* v. *Mungaleea.* 13th Sept. 1814. 1 N. A. Rep. 300.—Fombelle & Rees.

131. A confession of rape retracted by a prisoner was not considered by the law officers of the Nizamut Adawlut as sufficient proof against him. The Court convicted him on his proved confession. Sentence, 39 korahs, and imprisonment for seven years. *Mt. Rookman* v. *Ramsook.* 29th March 1819. 1 N. A. Rep. 381.—Fendall & Goad.

132. The principal evidence against the prisoner, a boy of twelve or thirteen years of age, being furnished by his own voluntary confession, that evidence was declared by the law officer to be insufficient for his conviction by reason of his non-age. This doctrine was overruled by the Court, and the prisoner fully convicted of murder; and there appearing no circumstance in his favour but his minority to render him a proper object of mercy, and it being proved that he was *doli capax*, he was sentenced to imprisonment in transportation for life. *Mt. Sahib Koonwur* v. *Sudasookh.* 28th Jan. 1820. 2 N. A. Rep. 2.—Fombelle & Goad.

133. A prisoner, found guilty by the *Futwa* of the law officers of privity to a *Dacoity* on his own confession in the *Mofussil*, and before the magistrate, was released by the Nizamut Adawlut; the persons whom he named as his accomplices having been acquitted of the charge of *Dacoity*. *Government* v. *Narain and others*. 6th April 1820. 2 N. A. Rep. 21. —Leycester and Goad.

134. A prisoner was convicted of murder on his own confession, corroborated by circumstantial evidence; the circumstance of his having been desired by the police officers not to fear to tell the truth not being held to be a sufficient reason for rejecting the confession. Sentence, imprisonment for life. *Government* v. *Hureesingha*. 9th Aug. 1820. 2 N. A. Rep. 33.—Goad & C. Smith.

135. The prisoner confessed at the *Thanna* that he killed with an arrow a person who had come to him for a debt, and who would not let him eat or drink. He subsequently stated before the magistrate that the homicide was accidental. The Circuit law officer declared that this statement should be received as most favourable to the prisoner. The law officers of the Nizamut Adawlut convicted him of murder, and declared him liable to *Kisás*. Sentence, imprisonment for life. *Mt. Soojurmunee* v. *Heeraram Cheith*. 22d Aug. 1820. 2 N. A. Rep. 39.—Goad & Leycester.

136. The prisoner confessed that he killed his sister and her paramour in the act of fornication. The *Futwa* declared the act justifiable, and the Court acquitted the prisoner.[1] *Government* v. *Gholam Mullick*. 22d Sept. 1820. 2 N. A. Rep. 48.—Goad & C. Smith.

137. It is not sufficient that the confessions of a prisoner be *verified* before the magistrate, but it is necessary that the original confession be *taken* and *written down* in the presence of the magistrate or his assistant. The Court rejected the confessions, not so taken in this case, and released the prisoners. *Gocoolchund Lal* v. *Cashee Manjee and others*. 31st March 1821. 2 N. A. Rep. 70. —Dorin & Goad.

138. The prisoner confessed that he killed his wife, not in the act of adultery, but on receiving abusive language when begging her to desist from her criminal intercourse with another man. Mr. C. Smith convicting the prisoner of murder, first proposed a capital sentence, but concurred in commuting it to perpetual imprisonment, which was the sentence passed. *Government* v. *Phoolchund*. 8th May 1821. 2 N. A. Rep. 79.—Dorin, C. Smith, & Goad.

139. The prisoner confessed to a murder, and pointed out human bones, which he alleged to be those of the person murdered. The Court held, that as the bones did not admit of identification, this was not a sufficient finding of the body to warrant a capital sentence. Sentence, imprisonment for life. *Keelal* v. *Chundwa*. 31st May 1821. 2 N. A. Rep. 82. —Goad & Dorin.

140. The only evidence of murder by poison being an alleged village confession, and the body of the missing person not having been found, the Court, on proof that the missing person was last seen in the prisoner's company, sentenced him to imprisonment for life, or until the missing person should be found, or his existence subsequently to his parting with the prisoner should be ascertained. *Juggoo* v. *Chaitoo Telee*. 16th June 1821. 2 N. A. Rep. 84.—Leycester & Goad.

141. The prisoner confessed in the *Mofussil*, and before the magistrate,

[1] This would not be the case now. In Sec 5. of Reg. IV. of 1822, it is expressly declared that "the justificatory plea that the person murdered was the mistress or relation of the prisoner, and detected in criminal intercourse with another man, or that the murdered man was found in criminal intercourse with the prisoner's mistress or relation, or, generally speaking, detected in fornication," shall not be upheld in bar of capital punishment.

that he killed a boy for his ornaments, and produced the ornaments worn by the deceased. On proof that the prosecutor promised not to prosecute if the prisoner would restore the ornaments, it was held not to be sufficient to bar capital punishment. Sentence, death. *Bostym* v. *Kuntheeram.*[1] 27th Aug. 1821. 2 N. A. Rep. 96.—Leycester.

142. The prisoner confessing that he killed the deceased because he had for months carried on a criminal intercourse with his (the prisoner's) wife, capital punishment was commuted to imprisonment for life. *Government* v. *Kumlaput.* 11th Sept. 1821. 2 N. A. Rep. 98.—Leycester.

143. The *Thanna* confession being the chief evidence against the prisoner, who was charged with the murder of her two infant children, by throwing herself and her two children into the river, when the latter were drowned; and it containing an expression which might be construed to mean that she accidentally fell into the river, the Court held that she was entitled to the benefit of the favourable interpretation, and accordingly acquitted her. *Government* v. *Mt. Kurwya.* 28th Feb. 1822. 2 N. A. Rep. 147.—J. Shakespear & Elliott.

144. The *Futwa* convicted the prisoner of *Dacoity* on his own confession; but it appearing that he had been induced to confess by the police *Muharrir* promising that he should be pardoned and appointed a *Barkandáz*, the Court rejected the confession and released the prisoner. The *Muharrir* was dismissed from office. *Government* v. *Netra and others.* 26th April 1822. 2 N. A. Rep. 166. —Goad & J. Shakespear.

145. The prisoners were convicted of highway robbery. The *Thanna* confession (not borne out by evidence on the record) that the prisoner had two other associates was not considered sufficient evidence of a "gang" to bring the case within the provisions of robbery by open violence, as defined in Sec. 3 of Reg. LIII. of 1803. Sentence, fifteen korahs and imprisonment for five years. *Government* v. *Lal Sing and another.* 20th May 1822. 2 N. A. Rep. 172.—Leycester.

146. The prisoner confessed that he killed his brother seven years before, after having been struck by him with a club. The *Futwa* found the offence to be homicide in self defence, and declared the prisoner entitled to his release. The Court inferred wilful murder, and sentenced the prisoner to imprisonment for life. *Pohup* v. *Runjeet.* 10th June 1822. 2 N. A. Rep. 183.—C. Smith & Goad.

147. It is irregular in a Judge of Circuit to enter into any examination of a prisoner as to his confession, beyond his simple avowal or denial of the same. The prisoners were convicted of gang robbery, attended with torture by burning. Sentence, thirty-nine korahs and imprisonment in transportation for life. *Kardee* v. *Sham Haree and others.* 10th June 1822. 2 N. A. Rep. 185.—Goad and J. Shakespear.

148. There being no evidence against the prisoner but his own confession, in which he admitted having killed his wife by repeated sword wounds, after she had wounded him, and his person exhibiting two wounds, the Court deemed his defence probable, and convicted him of culpable homicide. Sentence, imprisonment for five years. *Government* v. *Incha Kolee.* 28th April 1823. 2 N. A. Rep. 256.—Leycester & J. Shakespear.

149. A confession made voluntarily before a police officer at the village where the prisoner was apprehended was held not to be invalidated by the fact of a former confession having been made to a person, not a police officer, under promise of release, nor by the non-observance of the rule contained in Cl. 3. of Sec. 19. of Reg. XX. of 1817, which requires that whenever a confession may be taken at night, or at any

[1] But see *infra* Pl. 158 163.

other place than the police *Thanna*, the special reason for its having been so taken shall be stated in the *Dárógh'ah's* report. Sentence, death. *Government* v. *Ekadussee Kandee*. 27th Sept. 1823. 2 N. A. Rep. 291.—C. Smith & J. Shakespear.

150. In the case of a prisoner confessing, it is requisite that the confession should be read and explained to the prisoner at the time of taking the answer "Guilty or not guilty;"[1] and that the prisoner should then be questioned as to its authenticity or otherwise. It should also be read and explained to the subscribing witnesses. *Apurtee Dasee* v. *Mt. Souree*. 24th Dec. 1824. 2 N. A. Rep. 351.—C. Smith & H. Shakespear.

151. The prisoner confessed killing his wife in the act of adultery. There being no positive proof besides his confession, and the circumstantial evidence being rather in support of, than against it, the Court directed his release. *Government* v. *Chait Ram*. 14th July 1825. 2 N. A. Rep. 408.—Sealy and J. Shakespear.

152. The only evidence against the prisoner being his own confession that he killed the deceased while in the act of adultery with his (the prisoner's) wife, the Court held, that the confession should be taken altogether, and the prisoner released. Sentence, acquittal. *Chunna* v. *Purshadooa*. 24th May 1826. 2 N. A. Rep. 456.—Leycester & Dorin.

153. The prisoner, being apprehended on the charge of murdering his wife, confessed at the *Thanna* having killed her in the act of adultery. The *Futwa* of the law officers of the Nizamut Adawlut found the fact to be justifiable homicide. The Court convicted the prisoner of murder, he having denied his *Thanna* confession, and pleaded ignorance as to the manner of his wife's death both before the magistrate and the Court of Circuit, and sentenced him to imprisonment for life. *Government* v. *Mootea*. 7th Sept. 1826. 2 N. A. Rep. 472.—Dorin & Ross.

154. The only evidence against the prisoner being her *Thanna* confession, that she threw her child into a well, the Court deemed it insufficient for conviction. Sentence, acquittal. *Government* v. *Mt. Dhunhouree*. 23d April 1827. 3 N. A. Rep. 23.—Dorin & Leycester.

155. The prisoner confessed his having been in company with the deceased, when he was murdered by a third person, and concealing the fact, having received part of the property as hush money. The prisoner was convicted of being a principal in robbery and murder, and sentenced, the body not having been found, to imprisonment for life. *Permodhe Bukhal* v. *Churn Kandoo*. 12th May 1827. 3 N. A. Rep. 43.—C. Smith & Dorin.

156. A prisoner was convicted, on his own confession, of the murder of a boy for his ornaments. The Court held that a promise to the prisoner not to prosecute him should not operate to bar a capital sentence, such promise not affecting the credibility of the evidence generally. Sentence, death. *Peearay* v. *Nunheh*. 2d Aug. 1827. 3 N. A. Rep. 69.—C. Smith & Dorin.

157. A mere *Thanna* confession of privity to murder, repeated before the magistrate, but unsupported by circumstances, was not held to constitute sufficient proof of guilt. Sentence, acquittal. *Neeloo Aduk* v. *Goun Cowrah*. 7th Feb. 1828. 3 N. A. Rep. 97.—Leycester & Rattray.

158. A prisoner was convicted, on her own confession, of the murder of a girl for her ornaments; but the confession having been obtained by a police officer from the prisoner under a promise of pardon, the Court held that circumstance to be a sufficient cause to exempt her from capital punishment. Sentence, imprisonment for life. *Government* v. *Mt. Unjun-*

[1] The Circular Orders prescribe that the confession be read over to the prisoner after the defence has been made.

nee. 16th June 1828. 3 N. A. Rep. 156.—Sealy & Rattray.

159. When a conviction rests on the confession of a prisoner, any palliating circumstance contained in that confession should be received in mitigation of punishment. The prisoner, charged with the murder of his wife, confessed that he killed her on her attempting his life. The Court convicted him of aggravated culpable homicide, and sentenced him to imprisonment for fourteen years. *Mt. Joymanee* v. *Shunker.* 15th Jan. 1829. 3 N. A. Rep. 207.—Sealy & Leycester.

160. A prisoner was convicted of poisoning her husband; but as her confession, the only evidence against her, contained mitigating circumstances, she was sentenced to imprisonment for seven years. *Government* v. *Mt. Rookhmee.* 11th June 1829. 3 N. A. Rep. 236.—Turnbull & Ross.

161. A prisoner was convicted of perjury, in having denied on oath his attestation of a *Thanna* confession, whereas, by his own confession on trial, he was present and signed the confession. The justificatory plea of perplexity of mind was set aside by the Court. Sentence, imprisonment for three years. *Government* v. *Kauder Durjee.* 18th June 1829. 3 N. A. Rep. 238.—Leycester & Turnbull.

162. The prisoners were originally tried for highway robbery and acquitted; but no charge of rape was preferred against them by the prosecutrix on that occasion. Four of them acknowledged themselves, and implicated the fifth prisoner, as concerned either as principals or accessories in a rape on her person. On these confessions they were all indicted for a rape; but no other evidence appearing against them they were acquitted. *Government* v. *Ramkishen Sing and others.* 12th April 1830. 3 N. A. Rep. 325.—Leycester & Turnbull.

163. A prisoner was convicted, on her own confession, of the murder of a child, for the sake of its ornaments; but as it appeared that she had originally been induced to confess by a promise of impunity, capital sentence was commuted to imprisonment for life. *Koornee Moorlee* v. *Mt. Ugaree.* 30th June 1830. 3 N. A. Rep. 337.—Sealy & Ross.

164. A prisoner was convicted, on his own confession, of privity to murder and concealing his knowledge of it. Sentence, imprisonment for seven years. *Government* v. *Ruggoo Junna.* 14th July 1831. 4 N. A. Rep. 54.—Turnbull & Ross.

165. The prisoner having confessed that he wounded the deceased "with intent to kill," and the fact being also proved by evidence, the circumstance of the deceased having survived the infliction of the wound for two months was held in no way to lessen the guilt of the prisoner, who was accordingly sentenced to death. *Rughoo Das* v. *Gokhai Mullick.* 20th July 1833. 4 N. A. Rep. 243.—Rattray & Walpole.

166. The Session Judge objected to a confession being received against a prisoner, because it had been obtained by cross examination as to a *Mofussil* confession, which had not been proved. The Court held that the magistrate was quite regular in questioning the prisoner as to the fact of the *Mofussil* confession, to give him an opportunity of denying it, or of explaining whether it had or had not been obtained by improper means. The prisoner was convicted of *Dacoity*, and sentenced to twenty-five rattans and imprisonment for seven years. *Rugoo Ram Sing* v. *Lushkeree.* 3d Aug. 1833. 4 N. A. Rep. 245.—Walpole & Rattray.

167. Held by the Nizamut Adawlut, that to read over a confession to a prisoner on trial, before it was verified by the attesting witnesses, is irregular. The prisoner was convicted of robbery attended with wounding, and sentenced to imprisonment for life. *Kartick Jenna* v. *Rughooah*

Bagah. 20th March 1837. 5 N. A. Rep. 54.—Braddon.

168. A prisoner was convicted on his own confession, corroborated by circumstances, of having murdered the deceased and sunk her body in the river, because she threatened to drown herself, and he was apprehensive that the body, if found floating, might lead to his being suspected of the murder. Sentence, death. *Woojaul Bewah* v. *Goohee Chashate.* 17th May 1837. 5 N. A. Rep. 61. —Money & Braddon.

169. The prisoner's confession to a murder, alleged to have been committed many years before his apprehension, in the absence of any other proof that the murder was actually committed, was held to be insufficient for conviction. Sentence, released. *Government* v. *Sna Pa San.* 26th Nov. 1838. 5 N. A. Rep. 103.—Rattray & Money.

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18. *Conspiracy.*

170. In an indictment for conspiracy to defame, by preferring a false charge, it was considered necessary that the party against whom the conspiracy was formed should appear as prosecutor. Sentence, released. *Government* v. *Mungoo Kahar and others.* 19th Aug. 1828. 3 N. A. Rep. 171.—Leycester & Rattray.

171. On a trial for conspiracy, it was held by the Nizamut Adawlut that exciting discontent among the *Molangis*, by false statements to the prejudice of Government, was a punishable offence; the sentence of the local authority of one year's imprisonment was confirmed. *Government* v. *Joogul Pauter.* 5th May 1829. 3 N. A. Rep. 232.—Leycester & Sealy.

172. It was ruled that as the provisions of Sec. 2. of Reg. XIV. of 1827 are precise, and the penal acts liable to be the cause of a civil action detailed, and conspiracy not being one of them, damages arising from conspiracy cannot form the subject of litigation in a Civil Court. *Narroo Gunnesh* v. *Govindrao Bhiccajee; Buggoobaee* v. *Same; Juggonath Sumbajee* v. *Same.* 31st Jan. 1840. Sel. Rep. 228.—Marriott, Bell, & Greenhill.

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19. *Contumacy of Proclaimed Offenders.*

173. The period for attendance under a proclamation prescribed by Reg. IX. of 1808[1], is reckoned from the day on which it is promulgated, not from that on which it is dated. *Government* v. *Shewa Budhek.* 6th Aug. 1811. 1 N. A. Rep. 224.—Fombelle & Stuart.

174. A prisoner was convicted of opposing and fighting with the police, and of contumacy in not appearing when cited by a proclamation issued under Sec. 3. of Reg. IX. of 1808. Sentence, imprisonment for fourteen years. *Government* v. *Futteh and another.* 28th April 1817. 1 N. A. Rep. 342.—Rees.

175. The prisoners were acquitted of contumacy (but ordered to be tried for *Dacoity*) in consequence of proclamation not having been duly promulgated. It is essential on a charge of contumacy, that it be proved that the proclamation was made by beat of drum at every *Thanna* within the magistrate's jurisdiction; and on a trial for this offence, a *Futwa* of the law officer is not required. Proclaimed persons having been tried on a charge of *Dacoity* and murder, for which they were proclaimed, and not on the charge of contumacy, and the Court having ruled that they should have been tried on the latter charge first, it was determined, that, on being acquitted of the charge of contumacy, they should be tried *de novo*, on the charge of *Dacoity* and murder. *Government* v. *Akaloo and another.* 30th July 1821. 2 N. A. Rep. 87.—Leycester & Goad.

176. Held, by a majority of the Court, that the promulgation prescribed by Reg. IX. of 1808, does not apply to a case of robbery and murder,

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[1] Repealed by Act IV. of 1841.

originating in a private feud, where plunder was not the primary object of the offenders. But it was held, nevertheless, that the proclamation having been issued, the prisoners were entitled to the benefit of the old rule in the Regulation above cited, by which they were exempted from capital punishment, and declared liable to the penalty of contumacy only. Sentence, imprisonment in transportation for life. *Government* v. *Purtab and others.* 12th April 1823. 2 N. A. Rep. 248.—Leycester, Dorin, & Martin.

20. *Corporal Punishment.*

177. On conviction of wounding with intent to kill, it was held, that to award stripes would be inconsistent with the order declaring corporal punishment generally inapplicable in cases of culpable homicide. *Government* v. *Luchmun Geer.* 22d May 1823. 2 N. A. Rep. 269.—Leycester & C. Smith.

178. In a case of assault, attended with homicide and beating, the Circuit Judge recommended that stripes should be inflicted; but the Nizamut Adawlut, deeming that punishment inappropriate, sentenced the prisoners to imprisonment only. *Dewan Ghazee* v. *Jeewun and others.* 4th June 1824. 2 N. A. Rep. 323.—C. Smith & J. Shakespear.

21. *Corruption, Extortion, Bribery, &c.*

179. By Sec. 11. and 12. of Reg. XXII. of 1793[1], police officers are prohibited from suffering accusations of theft, &c. to be settled by private adjustment; and are required to bring all such cases to the knowledge of the magistrate. The prisoner, a police *Dároghah*, was charged with corruption in allowing a thief to compound his offence; but his motive in doing so not being considered corrupt, he having officially reported his act, he was sentenced to be reprimanded. *Government* v. *Mahomed Sauteh.* 17th Dec. 1808. 1 N. A. Rep. 180.—Harington & Fombelle.

180. A police *Dároghah* was convicted of extortion, and sentenced to imprisonment for one year without labour. The law officers held that those who had contributed to the extortioner's demands could not be admitted as witnesses, they being, in point of fact, plaintiffs in the case. The Court overruled this doctrine. *Government* v. *Moomtaz Ali.* 9th Nov. 1824. 2 N. A. Rep. 341.—C. Smith & J. Shakespear.

181. In a case of extortion attended with violence, the Court overruled the opinion of the circuit law officer, that the evidence of the eye-witnesses, who were cosufferers with the prosecutors, was insufficient for conviction. *Heeramun Tewarry* v. *Ram Sing Burkundaz and another.* 15th April 1834. 4 N. A. Rep. 286.—J. Shakespear.

22. *Culpable Homicide.*

182. A prisoner was convicted of culpable homicide, in striking a person whom he wished to press as *Baigárí*, who, in endeavouring to escape, fell into a well and was drowned. Sentence, imprisonment for five years. *Punchuma* v. *Dowlut.* 24th May 1825. 2 N. A. Rep. 396.—C. Smith & Sealy.

183. A prisoner was convicted of aggravated culpable homicide, in having, in a fit of anger, aimed a blow at a person, which blow fell upon a child of ten or eleven years of age, concealed from his view, and killed it. Sentence, imprisonment for fourteen years. *Nuffee Mundul* v. *Muthoor Ghose.* 1st Sept. 1838. 5 N. A. Rep. 96.—Rattray & Money.

23. *Dacoity.*

184. A prisoner was acquitted, he having been induced to confess privity to the *Dacoity*, by a promise from the *Muharrir* of the *Thanna* of being pardoned, and appointed a

[1] Rescinded by Sec. 2. of Reg. XX. of 1817.

Barkandáz. Government v. *Netra and others.* 26th April 1822. 2 N. A. Rep. 166.

185. A gang of twenty men, armed with clubs, secretly entered into a house and afterwards maltreated the inmates. Held, that this is sufficient to constitute robbery by open violence, as defined in Cl. 1. of Sec. 3. of Reg. XIII. of 1803. The prisoners, convicted of being of the gang, were sentenced to imprisonment for fourteen years in the Alipore jail. *Hurreenath* v. *Oopashoo and others.* 3d Dec. 1822. 2 N. A. Rep. 217.—Dorin & Goad.

186. In a case of burglary attended with violence, by a gang of more than three armed men, it should always be specified in the charge whether the violence was simultaneous with, or subsequent to, the entry; as in the former case the crime is *Dacoity,* as defined in Cl. 1. of Sec. 3. of Reg. LIII. of 1803. *Mt. Chumpa* v. *Mudden Jena.* 22d May 1829. 3 N. A. Rep. 271.—Leycester & Ross.

24. *Decrees.*

187. It appearing, in the course of a criminal trial, that a decree had been obtained in a civil suit by means of fraud, the Court did not think proper to cancel the decree, but directed that a copy of their sentence should be presented to the Court of Appeal, with a view to prevent unjust execution. *Government* v. *Dulgunjun and others.* 3d Jan. 1823. 3 N. A. Rep. 93.—Leycester & Rattray.

25. *Dhurna.*

188. A prisoner was charged with *Dhurna,* but acquitted, the circumstances against him not being sufficient to constitute the act. He sat sixteen days without eating or drinking aught but sherbet, not at the door of the house of the party whom he wished to compel to do him justice, but at a *Modi's* shop 100 paces from the house. *Government* v. *Dhurmpooree.* 10th Dec. 1808. 1 N. A. Rep. 164.—Harington & Fombelle.

26. *Duel.*

189. The prisoners having been arraigned as principals and seconds in a fatal duel, were declared by the Muhammadan law to be liable to discretionary punishment. But no punishment was awarded in addition to the imprisonment they had suffered before they were brought to trial, it appearing that the surviving principal had received gross insults from the deceased, and that the seconds had used every endeavour to effect an accommodation. *Government* v. *Beaufort and others.* 7th Aug. 1813. 1 N. A. Rep. 277.

190. By the French law, there is no specific punishment for a second, as the term is understood in England. *Ib.*

191 By the Muhammadan law, homicide by duelling, though wilful, being authorized by mutual consent, does not subject the person committing it to the act of wilful murder. But provision is made for such cases, when a prisoner may appear deserving of punishment, by Sec. 3. of Reg. VIII. of 1799. *Ib.*

192. A magistrate is authorized to commit all parties in a fatal duel to take their trial for murder; and, to authorize the commitment, it is not requisite that a complaint should be made by a private prosecutor. *Ib.*

27. *Embezzlement and Fraud.*

193. The treasurer of a Collector's office was sentenced to six months' imprisonment without labour or irons, for paying money out of the treasury under illegal and irregular orders of the Collector, which he well knew were illegal and irregular, he being *de facto* treasurer, though not confirmed; and though the Collector himself had not been brought to trial. *Government* v. *Lohmun.* 2d Jan. 1823. 2 N. A. Rep. 229.—Leycester & Dorin.

194. A cashkeeper, convicted of having removed a sum of money from the public treasury chest, without authority, though he might not have intended eventually to embezzle it, was held guilty of a misdemeanour under the provisions of Reg. II. of 1813. Sentence, imprisonment for one year without labour or irons. *Government* v. *Goolab Rai and another.* 23d March 1825. 2 N. A. Rep. 376.

195. A *Tahsíldár*, convicted of making unauthorized advances to individuals in balance for one year, and supplying the deficiency in the public accounts by sums paid as revenue for the succeeding year, was held guilty of embezzlement. Sentence, imprisonment for one year without labour or irons. *Government* v. *Gholam Akhee.* 14th Aug. 1826. 2 N. A. Rep. 463.—C. Smith.

196. Held, that the fact of a *Tahsíldár* realizing the amount of a debt due to him from the proceeds of the estate of his debtor, does not amount to embezzlement, such proceeds not having been specially paid as revenue, and the estate not being under legal attachment in his hands. *Government* v. *Zeynoolabideen and another.* 11th May 1827. 3 N. A. Rep. 37.—Dorin, Leycester, & C. Smith.

197. A *Tahsíldár*, being convicted of applying to his private use a certain sum of money, after he had reported it to the treasurer as received on account of Government, was declared guilty of a misdemeanour under Reg. II. of 1813, though the *Zamíndár*, by whom it was paid, acquiesced in the appropriation. The imprisonment he had already undergone being considered sufficient, the prisoner was discharged. *Government* v. *Amanut Ali.* 12th June 1827. 3 N. A. Rep. 45.—Ross & Dorin.

198. Held, that a fraud on the Post Office, by means of procuring a frank on a false pretence, is punishable by a pecuniary fine, commutable to imprisonment under Cl. 7. of Sec. 2. of Reg. LIII. of 1803. The Judge of Circuit who referred the case was directed to dispose of it agreeably to the provisions cited. *Government* v. *Anund Chunder Bunhoojea.* 22d April 1828. 3 N. A. Rep. 130.—Leycester & Turnbull.

199. If the accounts of the receipts and proceeds of the sale of stamps entrusted to him be rendered by a stamp vendor, the penalty only prescribed by Cl. 11. of Sec. 10. of Reg. X. of 1829, is exigible for the non-delivery of paper or money due according to the account. But if the account rendered be false, the vendor is liable, under the general Regulations, to a prosecution in the Criminal Court for fraud and embezzlement. In the present case, the prisoners, not having been charged with falsifying their account, with a view to the embezzlement of the stamped paper, were acquitted and released. *Government* v. *Sheonath Dutt and others.* 3d Aug. 1831. 4 N. A. Rep. 67.—Ross.

200. The prisoner, in attesting the confession of a person charged with a criminal offence, wrote a false name. Sentence, imprisonment for one year. *Government* v. *Ramdhone Ghose.* 9th Jan. 1836. 5 N. A. Rep. 20.—Braddon.

201. The *Patwarí* of a Government village, whose salary had been stopped by the revenue authorities, appropriated to his own use the collections in his hands to an extent not exceeding the amount of salary stopped: he was held guilty of embezzlement. Sentence, imprisonment for one year. *Government* v. *Ram Govind Gopt.* 8th Jan. 1839. 5 N. A. Rep. 114.—Rattray & Braddon.

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28. *Erroneous Homicide.*

202. When a blow aimed at one person kills another, the homicide is of that description called homicide by misadventure, and does not, according to Muhammadan law, subject the offender to the punishment of wilful

homicide. Such cases, however, are provided for by Reg. VIII. of 1801 (Sec. 10. of Reg. VIII. of 1803). *Jeeawun* v. *Lulwa*. 3d Sept. 1805. 1 N. A. Rep. 52.—H. Colebrooke & Harington.

203. The prisoner, being in the act of committing justifiable homicide, and killing two persons who interfered, was held by the *Futwa* to be guilty of erroneous homicide, and liable to *Díyat*. Sentence, imprisonment for two years. *Kuramut Khan* v. *Ghoosoo*. 9th July 1807. 1 N. A. Rep. 151.—Harington & Fombelle.

204. The act of giving poison to a person with a murderous intent, by means of which poison a third person is unintentionally killed, is not, in Muhammadan law, punishable with death; but the Nizamut Adawlut may inflict punishment under the provisions of Cl. 1. of Sec. 10. of Reg. VIII. of 1803. *Government* v. *Mt. Indeea*. 20th Dec. 1813. 1 N. A. Rep. 287.—Fombelle & Rees.

205. The prisoner was convicted of the murder of a man, in the intent to kill a woman, with whom he had maintained a criminal intercourse, but who had deserted him for the deceased.[1] *Mt. Motee* v. *Seetul Rai*. 31st March 1815. 1 N. A. Rep. 309.—Fombelle.

28 *a*. *Europeans*.

206. The name of a European being indirectly introduced in a transaction for which a native is committed for trial, does not vitiate the trial under the Circular Order. *Moteeram* v. *Gungaram and another*. 14th April 1821. 2 N. A. Rep. 73.

[1] Erroneous homicide (whereby a person, deliberately intending to murder one individual, accidentally kills another, is not held liable to *Kisás*) is provided against by Reg. VIII. of 1801 (Sec. 10. of Reg. VIII. of 1803), by which a person under such circumstances is declared liable to the same punishment as if the criminal act had been perpetrated on the person intended to be killed.

29. *Evidence*.

207. The testimony of witnesses in cases of robbery, when contrary to their first examination before the police officers, should be received with the utmost circumspection. *Sham Holdar and another* v. *Rama*. 11th Jan. 1805. 1 N. A. Rep. 3.—H. Colebrooke & Harington.

208. The evidence of two witnesses, one being a Hindú and the other the servant of the prosecutor, is insufficient to warrant a sentence of *Kisás*; the Muhammadan law requiring that the two witnesses shall be Muhammadans. This has been provided for by Sec. 56. of Reg. IX. of 1793. *Imambuksh* v. *Koochaee*. 27th June 1805. 1 N. A. Rep. 31.—H. Colebrooke & Fombelle.

209. Comparison of handwriting is not admitted by the Muhammadan law as legal evidence. *Government* v. *Chukkun Lal*. 26th Aug. 1806. 1 N. A. Rep. 113.—H. Colebrooke & Fombelle.

210. The testimony of wives may be received in corroboration of other evidence. *Government* v. *Sadik Ullah*.[2] 28th April 1807. 1 N. A. Rep. 144.—H. Colebrooke & Fombelle.

211. Evidence having been given in one trial, and considered unworthy of credit, the self-same evidence was adduced in another trial; and the law officers, not being aware that the witnesses were the same, convicted the prisoners, but on discovery of that fact reversed the *Futwa*. *Hunneef* v. *Doolal and others*. 14th April 1808. 1 N. A. Rep. 170.—Harington & Fombelle.

212. The wife of the prisoner being brought forward to substantiate his defence, (grounded on the deceased having been detected in the act of adultery with her,) her evidence was held to be inadmissible on account of the existing relationship between the parties. *Buncharam* v. *Govind Sahoo and another*. 31st Jan. 1809. 1 N. A. Rep. 182.—Harington & Fombelle.

[2] But see *infra* Pl. 212. 227.

213. Where there are only three witnesses, one male and two females, and their evidence is contradictory, the full legal proof required by the Muhammadan law is wanting. *Mt. Peetasee* v. *Ramzaun Hyot.* 12th June 1809. 1 N. A. Rep. 193.—Fombelle & Stuart.

214. A girl having eloped from the house of her parents, returns some time after, and asserts that she is their daughter; the denial of her identity by the parents is not conclusive, they being obviously interested in disclaiming the relationship. *Government* v. *Medaree and another.* 28th Sept. 1809. 1. N. A. Rep. 194.—Harington & Stuart.

215. The witnesses for the prosecution in a case of affray deposed that the person killed in the affray was wounded by a particular prisoner, not having named him in their examination before the magistrate, when they named other persons as having killed the deceased: this contradiction was considered by the law officers sufficient to establish the falsehood of the charge, and to nullify the whole of the evidence relating to the affray. The Court concurred with the law officers. *Ruttoo Singh and another* v. *Phoolail Singh and others.* 8th July 1812. 1 N. A. Rep. 236.—Burges & Rees.

216. Where there was only one witness to an assault, his evidence was held in Muhammadan law to be insufficient for conviction. *Ainoodeen* v. *Koorban Ali.* 5th April 1813. 1 N. A. Rep. 260.—Fombelle & Rees.

217. All persons (however young) deposing before the Criminal Courts, as prosecutors or witnesses, should be examined on oath, or under a solemn declaration, provided they appear to entertain a sufficient sense of the nature and obligation of an oath. *Sooga Pande* v. *Dookhey and others.* 5th June 1813. 1 N. A. Rep. 271.—Fombelle. *Government* v. *Hatim Ali.* 26th June 1821. 2 N. A. Rep. 85.—Leycester & C. Smith.

217 *a.* The principal evidence against the prisoner, a boy of twelve years of age, being his own confession, that evidence was declared by the law officers to be insufficient for his condemnation by reason of his non-age; but this doctrine was overruled by the Court, and the prisoner was convicted. *Mt. Sahibkoonwur* v. *Sudasookh.* 28th Jan. 1820. 2 N. A. Rep. 2.—Fendall & Goad.

218. The deposition of a witness to the confession of a prisoner cannot be received in evidence against him, unless it be taken in the presence of the prisoner. *Government* v. *Mungaleea.* 13th Sept. 1814. 1 N. A. Rep. 300.—Fombelle & Rees.

219. The evidence of accomplices is insufficient, under the Muhammadan law, to prove any criminal charge, though admitted, when corroborated by other evidence, to establish violent presumption. *Radhacant Doss and others* v. *Mohadeyb.* 2d Jan. 1815. 1 N. A. Rep. 304.—Fombelle.

220. A witness in a case of murder appearing to have received property with a knowledge that it was not obtained honestly, the Nizamut Adawlut directed his committal for trial on that charge. His examination on oath was declared not to be admissible as evidence against him on his trial. *Mt. Rujhoo* v. *Edoo.* 6th Feb. 1819. 1 N. A. Rep. 373.—Rees.

220 *a.* Held, that it is irregular in a Session Judge to cross examine a prisoner on trial with a view to his conviction after he has made his defence. *Government* v. *Gunga Pursaud.* 5th Feb. 1820. 2 N. A. Rep. 7.—Fendall & Goad.

221. The evidence of a witness on a trial varying from that which, according to the *Thanna* Report, he was there stated to have given; it was held that such variation was not sufficient to invalidate it. *Mt. Juwahir* v. *Kullooa.* 29th Feb. 1820. 2 N. A. Rep. 17.—Leycester & Goad.

222. The evidence of a convict

having been taken, with a view to the conviction of a prisoner charged with participation in a *Dacoity*, for which such convict had already been sentenced, the Court held that his evidence was wholly inadmissible. *Government* v. *Jey Singh.* 17th April 1820. 2 N. A. Rep. 25.—Leycester.

222 *a*. It is irregular not to hear witnesses named for the defence, on the ground that they have been already heard for the prosecution. *Bholanath and others* v. *Chand Holdar and others.* 17th Aug. 1820. 2 N. A. Rep. 37. — Leycester & Goad.

223. The prisoner was charged with perjury in giving a false schedule of his property, for the purpose of being admitted to sue as a pauper, and acquitted. Held, that the recital of his having made oath in the *Rubahárí* of commitment is not sufficient evidence of the fact; and that the recorded evidence of witnesses in a civil suit is not sufficient proof, in a criminal trial, as to the real value of his property. *Government* v. *Byjnath Singh.* 28th Feb. 1821. 2 N. A. Rep. 64.—Leycester.

224. The depositions of two private individuals to a confession of arson, made before apprehension, and not reduced to writing, by a girl eleven years of age, was held by the law officers of both Courts to be sufficient for her conviction, but was rejected by the Court of the Nizamut Adawlut, especially with reference to the tender years of the prisoner. Sentence, acquittal. *Neel Kaunt* v. *Mt. Nunhya.* 14th Sept. 1820. 2 N. A. Rep. 45.—Goad & Leycester.

225. The prisoner confessed a murder, and pointed out human bones, which he alleged to be those of the persons murdered. The Court held, that as the bones did not admit of identification, this was not a sufficient finding of the body to warrant a capital sentence. *Kealal* v. *Chundwa.* 31st May 1821. 2 N. A. Rep. 82.—Goad & Dorin

226. The prisoner confessed a murder; and a body being found, which the prisoner admitted to be that of the person murdered, the Court did not deem the absence of proof of its identity to be sufficient to bar a capital sentence. *Paim* v. *Jeorakhun.* 31st Oct. 1821. 2 N. A. Rep. 104. —Goad & Shakespear.

227. A wife should not be called on to give evidence against her husband, except in cases of urgent necessity. *Mt. Lultea* v. *Lurrye Chung.* 28th Feb. 1822. 2 N. A. Rep. 149. —Shakespear & Elliott.

228. A *Thanna* confession (not borne out by the evidence on record) that the prisoner had two other associates in highway robbery, is not sufficient evidence of a "gang" to bring the case within the provisions of Sec. 3. of Reg. LIII. of 1803. *Government* v. *Lal Singh and another.* 20th May 1822. 2 N. A. Rep. 172.—Leycester.

228 *a*. It is irregular in a Judge to enter into an examination of a prisoner as to his own confession, beyond his simple avowal or denial of it. *Kardee* v. *Sham Haree and others.* 10th June 1822. 2 N A. Rep. 185. — Goad & J. Shakespear.

229. The Circular Order, which directs that the examination of civil surgeons relative to the real or assumed insanity of a prisoner should be taken on oath, is equally applicable to their depositions as to violent or unnatural deaths. *Ramdial Bukhal* v. *Mt. Ludroon.* 21st Nov. 1822. 2 N. A. Rep. 213. — Leycester & J. Shakespear.

230. In a case of extortion, the law officers held that those who contributed to the extortioners' demands could not be admitted as witnesses, as they were, in point of fact, plaintiffs in the case; but the Nizamut Adawlut overruled this doctrine. *Governement* v. *Moomtaz Ali.* 9th Nov. 1824. 2 N. A. Rep. 341.—C. Smith & J. Shakespear. *Heeramun Tewarry* v. *Ram Singh Burkoondaz.* 15th

April 1834. 4 N. A. Rep. 286.—H. Shakespear.

230 *a*. The Judge, in putting the prisoner on her defence, subjected her to a string of upwards of twelve interrogatories, eleven of which had a direct tendency to criminate the prisoner, and in course of which she actually did criminate herself. It was held, that such practice was objectionable, and should be discontinued. *Government* v. *Bowul Bewah*. 6th Dec. 1822. 2 N. A. Rep. 220. — Leycester.

230 *b*. The Judge of Circuit, after concurring with the *Futwa*, which acquitted the prisoners of murder, proposed to examine another witness for the prosecution. The Court observed, that the Judge should have examined the witnesses, or, having doubts of the propriety of doing so, referred the question to the Court before taking a *Futwa;* but that having taken one, and not dissenting therefrom, he should immediately have issued a warrant for the release of the prisoners. *Government* v. *Nujuf Ali and another*. 16th June 1825. 2 N. A. Rep. 404. — C. Smith & H. Shakespear.

230 *c*. After taking from his law officer a *Futwa* acquitting the prisoners, the Judge of Circuit, concurring therein as the evidence then stood, recommended that an additional witness should be examined against them; but he was informed that this was illegal, and directed to release the prisoners forthwith. *Ib*.

231. It is no sufficient reason for rejecting evidence to the defence, that the witnesses named by the prisoner had been accused before the magistrate of participating in the offence charged, but released by that officer. *Ramdoolal Jogee* v. *Rampershad Sookul*. 25th July 1825. 2 N. A. Rep. 413.—C. Smith.

232. In a case of a prisoner standing mute, it is not sufficient, under the Court's Circular Orders, that the deposition of the civil surgeon be taken as to his sanity or otherwise, but he should be examined specifically as to the cause of his standing mute. *Government* v. *Khandharee*. 24th Sept. 1825. 2 N. A. Rep. 416.—C. Smith, Ross, & H. Shakespear.

232 *a*. On trial for forgery, the Judge, on the prisoner pleading *not guilty*, took no evidence for the prosecution, but immediately proceeded to take the prisoner's defence. Held, that this was irregular, and that the Judge should not have called on the prisoner for his final defence, until something had been established against him, of which it was necessary that he should furnish a refutation. *Government* v. *Bukhtawur*. 29th April 1826. 2 N. A. Rep. 454. — Leycester, C. Smith, & Sealy.

232 *b*. The mere fact of a person filing a forged deed of sale in Court, he being interested in establishing its contents, affords a sufficient presumption that he uttered it knowing it to be forged. *Ib*.

233. The evidence of witnesses for the prosecution having been taken after the prisoner's defence, without his having been called upon for a further defence, as regarded such testimony, the Court held that the proceedings were informal, and returned them to have the omission supplied. *Government* v. *Surroop*. 7th Oct. 1826. 2 N. A. Rep. 481.—Leycester, Ross, & Dorin.

234. In a trial for perjury, it being certified by the magistrate that the false deposition was taken on oath, and the prisoner not having denied being sworn, the Nizamut Adawlut did not deem the omission to bring witnesses to that fact to be material, though it would have been more regular. *Government* v. *Mt. Surmunee*. 23d April 1827. 3 N. A. Rep. 22.—Leycester, C. Smith, & Dorin.

235. The evidence of a single witness, not corroborated by other proof, as to the recognition of prisoners as having belonged to a gang of robbers, was held to be insufficient for their

conviction. *Ram Suhloo* v. *Laul and another.* 7th Feb. 1828. 3 N. A. Rep. 99.—Turnbull.

236. A prisoner was acquitted of the charge of being one of a gang, who committed a desperate robbery by open violence, the evidence of an approver, and the admission of three convicted accomplices, being held insufficient legal proof for conviction. *Government* v. *Puhloo Rai.* 19th March 1828. 3 N. A. Rep. 112.—Sealy & Turnbull.

237. The finding a skull, recognized as that of a missing boy by a peculiarity in the jaw bone, was held not to be sufficient proof of identity to warrant a conviction of murder. *Haubil* v. *Wuzeer Khan and another.* 7th April 1828. 3 N. A. Rep. 122. —Leycester, Rattray, & Sealy.

238. The dying declaration of one of two of the murdered individuals, the fact of the prisoner's having been seen to quit the house in which the murdered persons were on the night of the murder, of his not returning home till the succeeding night, of his clothes being stained with blood, and his statement being disproved by circumstances, were held to be sufficient to furnish presumptive proof on which to found a capital sentence against the prisoner as guilty of the murders charged. *Government* v. *Bindrabun Doss.* 30th April 1828. 3 N. A. Rep. 131.—Ross & Turnbull.

239. A Military Court of Inquiry is not competent to administer an oath. *Government* v. *Mungoo Kahar and others.* 19th Aug. 1828. 3 N. A. Rep. 171.—Leycester & Rattray.

240. Held, that the discrepancy of the evidence of the parties in an affray affords no ground for the acquittal of those charged: credit must be given to that which appears best supported by the circumstances of the case. *Romsun Pardhun* v. *Ruggoo Dowbey and others.* 22d April 1829. 3 N. A. Rep. 221.—Leycester & Rattray.

241. A person committed as an accomplice in the crime of poisoning, was acquitted for want of evidence, and supplementary proceedings ordered to be held at the ensuing Sessions, in which his evidence should be taken for the conviction of the principal. *Government* v. *Mungooah and another.* 29th April 1829. 3 N. A. Rep. 227.—Leycester.

242. The Court overruled the acquittal by the law officers of a person, on the ground of one of the witnesses to the charge being the son of the prosecutor; and held that the evidence of near relatives is admissible in criminal trials. *Buldee* v. *Gunga Singh.* 25th Feb. 1830. 3 N. A. Rep. 309.—Leycester & Rattray.

242 *a*. The Commissioner having deemed it unnecessary in a trial for murder to take the evidence offered by the prisoner for his defence, the proceedings were returned for the purpose; and on the receipt of the fresh evidence the prisoner was acquitted. *Government* v. *Gurreeboollah.* 27th April 1833. 4 N. A. Rep. 228.—H. Shakespear.

243. The only evidence against prisoners charged with having beaten and otherwise ill-treated a person, so that he died in consequence, being the declaration of the deceased it was held insufficient for conviction. *Government* v. *Gadloo Chowkeedar and others.* 30th April 1831. 4 N. A. Rep. 31.—Rattray.

244. The principal evidence for the prosecution being the prisoner's wife, and a lad of fourteen years of age, the law officer found it insufficient for conviction under the Muhammadan law, as being that of a female and a minor.[1] *Ushgur* v. *Auzeem.* 25th Nov. 1833. 4 N. A. Rep. 261.—H. Shakespear.

245. Witnesses incapacitated by youth or other cause from making depositions on oath are in no case to be examined at all. *Hunsrajee Doss* v. *Gheenahoo Kundoo and another.* 18th June 1834. 4 N. A. Rep. 305. —Braddon & Rattray.

246. In a case of murder, a prin-

[1] But see *infra* Pl. 247.

cipal witness having died before the trial came on before the Court of Sessions; it was held, that if the Session Judge considers the evidence to be of sufficient importance to warrant his doing so, it is incumbent on him to transfer the deposition of the deceased person, taken before the Magistrate, duly authenticated, to the record, affording to it such consideration as it may appear to claim when weighing the testimony adduced. *Soobun Shah* v. *Jooma Ghazi.* 20th Dec. 1834. 4 N. A. Rep. 335. — Rattray.

247. The evidence of a woman and of a boy of twelve years of age was considered sufficient to convict a prisoner of murder, in opposition to the *Futwa* of the law officers. *Gov rnment* v. *Kamdar Khan.* 23d June 1835. 5 N. A. Rep. 7.—Rattray & Robertson.

248. In a trial for murder, the Court held that the deposition of the deceased, taken before his death, should have been brought on the record of the trial, if first duly proved. *Government* v. *Shewdial.* 3d Aug. 1835. 5 N. A. Rep. 9.—Robertson & Stockwell.

248 *a.* The prisoners having been charged with a crime of which some of their associates had been previously convicted; it was held that it is not sufficient to proceed entirely on the record of the former trial, but the evidence to the facts of the case should be taken *de novo* in the presence of the prisoners. *Bholanath Shah* v. *Dhora and others.* 9th Dec. 1835. 5 N. A. Rep. 17.—Stockwell.

249. Held, that certain convicts, called by the prisoner in his defence; ought to have been examined on oath. It has since been enacted, by Act XIX. of 1837, that no conviction renders a witness incompetent. *Government* v. *Kurum Ally.* 19th Nov. 1836. 5 N. A. Rep. 37.—Braddon & D. C. Smyth.

249 *a.* The Session Judge having sent for and taken further evidence on a trial, after a jury had delivered their verdict, the Court held that such proceeding was fatal to the conviction of the prisoner, and accordingly acquitted him. *Matoo* v. *Peerbuksh and others.* 23d Nov. 1836. 5 N. A. Rep. 38.—Rattray & D. C. Smyth.

249 *b.* After the completion, by the Session Judge, of a trial referred to the Nizamut Adawlut, further evidence was submitted by the Magistrate calculated to change entirely the features of the case in favour of the prisoner. The Nizamut Adawlut held that it was not necessary to quash the trial, but, cancelling the *Futwa* of the law officer of the Sessions Court, directed the Session Judge to proceed in the trial, taking the further evidence, and disposing of the case in the usual manner. *Meer Gholam Sumdanee* v. *Rughoonath Doss.* 10th Dec. 1836. 5 N. A. Rep. 40.—Rattray & D. C. Smyth.

250. In the event of the absence of witnesses called by a prisoner to his defence, it is the duty of the Session Judge to satisfy himself in regard to the measures taken for causing their appearance, and to adopt the necessary steps for securing their attendance. *Bungalee Mossulman* v. *Bhoodye Mossulman and others.* 6th Aug. 1838. 5 N. A. Rep. 94. — Braddon.

251. The prisoner having declined putting any questions to a witness whom he had cited for the defence, on the plea that he had been tampered with by the prosecutor; it was held that it was objectionable in the Session Judge to examine him against the prisoner. *Bharam Khan* v. *Amanut Khan and others.* 8th March 1839. 5 N. A. Rep. 115.—Tucker.

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30. *False Personation.*

252. False personation for one's own advantage is an offence under the Muhammadan law. No specific penalty is laid down for the offence, but the punishment is at the discretion of the *Hákim*, with a view to restrain the offender, respect being

had to the circumstances of the offender, and the character of the offence, which is apparently in itself of a trivial nature. *Government* v. *Aluk Shah.* 13th June 1839. 5 N. A. Rep. 122.—Braddon & Tucker.

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31. *Foreign Territories, offences committed in.*

253. By the Muhammadan law *Moostamins* (*i.e.* persons residing in a foreign country) are justified in making reprisals, by any means in their power, on the sovereign of that country, for sums due by himself or his subjects, if he refuse to give redress on a representation of the case. By Reg. V. of 1809 such persons, if subjects of the Company, are liable to be tried and punished for any act of aggression, in like manner as if the offence had been committed within the Company's territory. *Government* v. *Bhobun Singh and others.* 16th April 1818. 1 N. A. Rep. 360. —Fendall & Rees.

254. The prisoner having been tried for a murder committed in the Lucknow territory, the proceedings were quashed by the Nizamut Adawlut, in consequence of the permission of Government not having been obtained to bring the prisoner to trial, as required by Reg. V. of 1809. *Buksh* v. *Baboo.* 11th Feb. 1820. 2 N. A. Rep. 10—Fendall & Goad.

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32. *Forgery.*

255. Affixing a person's name in his absence, but with the permission of his constituted agent, to a security bond, was held not to constitute forgery. But whether the person whose name was so affixed be responsible or not was left to the cognizance of the Civil Court. *Government* v. *Doorgapershaud and another.* 1st March 1813. 1 N. A. Rep. 253.—H. Colebrooke.

256. An authorized pleader of the Civil Court, though acquitted of the charge of forging a document, and presenting it to the Court, knowing it to be forged, was dismissed from office in consequence of suspicion arising from his having presented a forged deed, and bringing forward false witnesses in support of it. *Government* v. *Wahid Khan and others.* 19th May 1814. 1 N. A. Rep. 293. —H. Colebrooke & Fombelle.

257. To the offence of fabrication, under Reg. XVII. of 1817, no writing is necessary: it is sufficient that the seal be forged, though the paper be blank.[1] *Government* v. *Jyechund and others.* 31st Jan. 1820. 2 N. A. Rep. 3.—Fendall & Goad.

258. To antedate and postdate deeds, being a common practice with the natives, the Court did not admit this fact to be evidence of forgery. *Government* v. *Ramkunhai.* 14th Aug. 1820. 2 N. A. Rep. 36.—C. Smith & Goad.

259. The prisoner having lent Rs. 51 to a person who afterwards died (whose bond he held on plain paper, bearing interest at 24 per cent. per annum), forged and filed a bond on stamped paper for the same amount, bearing interest at 12 per cent. Held, that this is an act of forgery, not deserving of less than three years' imprisonment; for on the bond for 24 per cent. the prisoner suspected he would not get any interest. Sentence, imprisonment for three years. *Government* v. *Chunder Deen Havildar.* 25th Aug. 1821. 2 N. A. Rep. 95. —Leycester & Dorin.

260. The *Muharrir* of a *Thanna*, with a view to screen himself from the charge of having deputed a *Barkandáz* to inquire into a theft, falsified the magistrate's record, to make it appear that the *Jamadár* had been deputed in another case. Held, that this is forgery, but of the lightest description. Sentence, imprisonment for six months. *Government* v. *Bhungee Lal.* 11th Sept. 1821. 2 N. A. Rep. 99.—Leycester.

261. The Judge of Circuit having convicted the first prisoner of forging receipts for the pension of a person

[1] And see Pl. 263.

deceased, and the second of uttering the same, referred the trial, with a view to a mitigation of the minimum sentence of three years' imprisonment, passed on the latter under Cl. 2. of Sec. 9. of Reg. XVII. of 1817. Held, that as the Regulations fix no minimum punishment for the offence of *uttering*, no reference was necessary; the Judge being competent, under Sec. 10. of the Regulation cited, to pass any sentence he might consider proper, not exceeding seven years. Sentence, imprisonment for three years. *Sheo Lal* v. *Amaun Ali and another*. 12th March 1823. 2 N. A. Rep. 244. — Dorin & C. Smith.

262. A prisoner was convicted by the Judge of Circuit of having personated a *Díwání Chuprási* and of having, by means of a forged summons, arrested the prosecutor; and sentenced (in consideration of his having been confined ten months) to imprisonment for two months. The Nizamut Adawlut considering the case to be one of forgery, in which the Judge of Circuit was not competent to pass a less severe sentence than imprisonment for three years, called for the proceedings, and sentenced the prisoner to be imprisoned for two years and ten months, in addition to the sentence passed by the Session Judge. *Baboo Momin* v. *Andaroo*. 8th Jan. 1825. 2 N. A. Rep. 354.—C. Smith & Sealy.

263. Fabricating seals, and affixing them to plain papers for future use, with a fraudulent intent, was held to amount to forgery. Of several prisoners, No. 1 was convicted of fabricating such seals, and selling plain paper to which such seals were affixed, and sentenced to *Tashhír* and imprisonment for seven years; the remaining prisoners of privity to, and concealment of, the same, and sentenced to imprisonment for two years. *Kasim Ali Khan* v. *Hunooman and others*. 16th June 1825. 2 N. A. Rep. 405.—C. Smith & J. Shakespear.

264. A prisoner was convicted of knowingly filing a forged deed of sale in Court, with intent to defraud; the mere fact of his filing it, he being interested in establishing its contents, affording a sufficient presumption that he uttered it knowing it to be forged. Sentence, imprisonment for two years. *Government* v. *Buktawur*. 29th April 1826. 2 N. A. Rep. 454. — Leycester & Sealy.

265. Having in possession seals bearing the impression of other individuals, was held to constitute no offence under the Regulations. The prisoners, having been charged with forging the seals, were acquitted and released. *Government* v. *Fuzul Ali and another*. 12th June 1828. 3 N. A. Rep. 153.—Leycester & Rattray.

266. A commitment by a Magistrate for forgery and perjury in a civil suit, without reference to a Civil Court, was declared illegal and void, the provisions of Reg. III. of 1801 being considered applicable to charges of forgery preferred by parties in civil suits against their opponents. Sentence, released. *Government* v. *Bungsee Dhur Chowdree and others*. 1828. 3 N. A. Rep. 203. — Leycester & Ross.

267. The prisoners, subordinate officers of a Collector's office, charged with forgery, in having written certain deeds of sale, and therein fraudulently inserted the word "*Zamíndárí*" (whereas the rights of the *Zamíndár* were never sold), were acquitted; the mere fact of their having copied one of the deeds of sale not being deemed sufficient ground for inferring a fradulent intent or knowledge of the forgery, and there being no proof whatever that either of them drafted or compared the deeds, or held any communication with the purchaser, or in any way profited by the forgeries. *Government* v. *Tarnee Churn Ghose and another*. 5th July 1831. 4 N. A. Rep. 53.—Turnbull.

268. A prisoner was charged with forgery under the following circumstances:—Having tendered a security bond on plain paper, he was directed

to furnish it on stamped paper. He then copied the bond, including the names of witnesses, on paper of the proper value, and got the surety to sign it with his own hand. Held, that his copying the names of the witnesses, without any fraudulent intent, did not amount to forgery. *Government* v. *Dureawoe Sing.* 24th Aug. 1838. 5 N. A. Rep. 95.—Money.

269. In a trial for forgery, in which the alleged forged document was not forthcoming; it was held that the charge could not be sustained. The prisoners were, however, convicted on a second count, viz. extortion, and sentenced to imprisonment for two years. *Government* v. *Akbur Allee.* 13th Dec. 1838. 5 N. A. Rep. 112.—Money & Reid.

270. A copyist in a public office inserted in a petition, presented by a party for copies of certain documents, an entry of a paper of which he wished to procure a copy for himself. Held, that he was guilty of forgery, as defined in Cl. 3. of Sec. 4. of Reg. II. of 1807. Sentence, imprisonment for one year. *Government* v. *Ramanath Paul.* 26th Sept. 1840. 5 N. A. Rep. 174.—Dick.

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33. *Futwas.*

271. The Regulations require that *Futwas* be delivered according to the opinions of the two disciples. *Neel Munee Doss* v. *Gour Doss.* 1st Aug. 1805. 1 N. A. Rep. 41.—H. Colebrooke & Harington.

272. The *Futwa* of the law officers convicting the prisoners of a minor offence, distinct from that with which they were charged, and acquitting them on the latter, the Court directed their release, they being still liable to be tried on the minor charge. *Government* v. *Ramnewauz and others.* 7th Oct. 1820. 2 N. A. Rep. 50.—Leycester & Goad

273. When a prisoner is charged with two or more distinct offences, the record of each trial should be kept separate, and a *Futwa* should be taken on each individual case, not on the whole collectively. *Mt. Peerbuksh* v. *Choona.* 31st Dec. 1821. 2 N. A. Rep. 140.—Leycester.

274. A law officer having declared in his *Futwa*, as a ground of the acquittal of the prisoner, that he might have concealed his knowledge of a *Dacoity* from fear; and that it was inexpedient to punish him, lest it should deter other offenders from giving information; the Court held that he had exceeded his duty, and that he should not have referred to matters having no connection with Muhammadan law. *Kishen Mohun and another* v. *Anwar and others.* 31st Dec. 1821. 2 N. A. Rep. 142.—Leycester.

275. Under the Muhammadan law, a *Futwa* of *Siyásat* extending to death cannot be given, except for murder; though some authorities recognize, in abstract terms, the right of the ruling power to extirpate evil doers generally. *Sudas Seo* v. *Chundoo Kandoo.* 24th Sept. 1825. 2 N. A. Rep. 418.—C. Smith & Sealy.

276. All trials must be referred to the Nizamut Adawlut wherein the Circuit Judge may differ from the *Futwa* of the law officer on any other grounds than those specially provided for in the Regulations. *Government* v. *Nundee.* 30th April 1829. 3 N. A. Rep. 230.—Leycester & Turnbull.

277. Held, that the law officer, in a trial for perjury, had not exceeded his powers in declaring that the prisoner was liable to the punishment of *Tashhír.* *Government* v. *Keffoo and another.* 12th May 1837. 5 N. A. Rep. 58.—Braddon & Hutchinson.

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34. *Harbouring Adulterers.*

278. By the Muhammadan criminal law, persons who harbour adulterers are punishable by *Akúbat.* *Gooroopershaud Cawora* v. *Ramsoondur and others.* 11th Sept. 1820. 2 N. A. Rep. 42.

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35. *Harbouring Dacoits.*

279. In a trial for *Dacoity*, the case of a prisoner (the proprietor of an indigo factory), charged with harbouring *Dacoits*, was referred back by the Session Judge to the Magistrate for disposal under the provisions of Reg. VI. of 1810. Held, that the proceedings on which the original commitment was made were not sufficient for a reference to the Nizamut Adawlut under Sec. 5. of Reg. VI. of 1810; and the Magistrate was instructed to receive from the prisoner any further defence or evidence he might wish to offer. *Dusrath Day* v. *Golaub Hagoorea and others.* 29th Dec. 1829. 5 N. A. Rep. 153.—Court at large.

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36. *Highway Robbery.*

280. A prisoner was convicted of suddenly snatching a necklace from a boy on the highway, without previous intimidation or act of violence, which was held by the *Futwa* not to amount to robbery by open violence. Sentence, three years' imprisonment. *Government* v. *Bikharee.* 14th June 1813. 1 N. A. Rep. 269.—H. Colebrooke & Fombelle.

281. The prisoners were charged with administering a deleterious drug to some travellers in food, from eating which death ensued, and robbing them while insensible from the effects. The murder not being clearly proved, the prisoners were convicted of highway robbery only. Sentence, imprisonment in transportation for life. *Mt. Jusoda and another* v. *Surroop Doss and others.* 1st June 1816. 1 N. A. Rep. 320.—Fombelle & Rees.

282. A prisoner was convicted of robbing the prosecutor of his ornaments, having seized him by the throat and thrown him down. Held, that this did not amount to robbery by open violence, as, to constitute that offence, it is necessary that the prisoner should go out armed or in a gang. *Kunhya Lal* v. *Balgovind.* 8th May 1820. 2 N. A. Rep. 23.—Leycester & Goad.

283. A prisoner was convicted of highway robbery, attended with assault. The prisoner being alone and unarmed the offence did not come within the provisions of robbery by open violence, as defined in Cl. 1. of Sec. 3. of Reg. LIII. of 1803. *Duljeet* v. *Purmsookh.* 21st Dec. 1820. 2 N. A. Rep. 53.—Leycester.

284. Of two prisoners who were unarmed, one snatched a necklace from an old woman in the day-time on the high road, who fell from the pull, but sustained no injury, while the other prisoner stood by. The Court held that this did not amount to robbery by open violence, and returned the case to the Circuit Judge. *Buksh* v. *Koonwa and another.* 13th March 1822. 2 N. A. Rep. 153.—C. Smith & J. Shakespear.

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37. *Ibráa.*

285. The Nizamut Adawlut will pay no regard to the circumstance of a prosecutor waiving his demand of *Kisás* against the prisoner. *Poorun* v. *Cheeta.* 19th Nov. 1805. 1 N. A. Rep. 86.—H. Colebrooke & Harington.

286. In the case of a prisoner wounding his wife, the law officers of the Nizamut Adawlut declared that the prisoner was released from all legal penalty, the wounded person having withdrawn her claim. Sentence, three years' imprisonment. *Government* v. *Nunnah* 30th Sept. 1817. 1 N. A. Rep. 344.—Harington & Rees.

287. The Muhammadan law admits the right of the ruling power to punish serious offences for the ends of justice, though the injured individual waive his claim. *Mt. Sebha* v. *Moyunoolla.* 19th Sept. 1818. 1 N. A. Rep. 367.—Harington & Fendall.

288. The prisoner, who appeared to be about twelve years of age, cut off the *membrum virile* of her husband. On his declining to prosecute, the law officers declared that the pri-

soner, being a minor, did not incur punishment.[1] *Juttee Ram* v. *Jye Nunnee.* 20th July 1820. 2 N. A. Rep. 29.—Leycester, C. Smith, & Goad.

289. In a case of rape, the Court sentenced the prisoner to punishment, though a *Razínámeh* was filed by the injured party, in consequence of the prisoner's promise to marry her, which was deemed inadmissible in so heinous an offence. *Government* v. *Fakeerchand Chung.* 21st April 1828. 3 N. A. Rep. 127.—Sealy & Turnbull.

290. The prosecutor, in a trial for murder, having expressed, in the Sessions Court, his unwillingness to proceed with the charge against the prisoner; it was held that such declaration did not vitiate the trial. The Court, however, were of opinion, that, on such declaration being made, the Session Judge should have directed the Magistrate to issue the necessary instructions to the Government pleader to carry on the prosecution. *Sadee Sheikh* v. *Bajeed Sheikh.* 24th July 1840. 5 N. A. Rep. 172.—Lee Warner & Rattray.

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38. *Indictment.*

291. A prisoner may be convicted as an accessary when arraigned as a principal; or of a less offence, when under arraignment for a greater of the same nature, and founded on the same facts; but not if the crime established be totally unconnected with that charged against the prisoner. *Government* v. *Lungra and others.* 20th March 1813. 1 N. A. Rep. 257. —H. Colebrooke.

292. On a charge of forgery the *Futwa* convicted of fraud. This being a minor offence, and distinct from that charged, the Court directed the release of the prisoners, observing, at the same time, that they were still liable to be brought to trial on the minor charge. *Government* v. *Ramnewauz and others.* 7th Oct. 1820. 2 N. A. Rep. 50.—Leycester & Goad.

293. The *Futwa*, acquitting the prisoners of the murder charged, convicted them of conspiracy, &c.: the Circuit Judge concurring, referred the trial. Held, that as the *Futwa* convicted of an offence distinct from that charged, and the Circuit Judge concurred in acquittal of the offence charged, the prisoners ought at once to have been released. *Government* v. *Gurhooa and others.* 9th July 1827. 3 N. A. Rep. 50.—C. Smith & Sealy.

294. On a charge of procuring abortion, the *Futwa* convicted of causing the death of the infant by exposure. Held, that this would be to convict of a greater offence than was charged, and essentially distinct. *Government* v. *Mt. Zynd.* 12th July 1827. 3 N. A. Rep. 56.—Leycester & Dorin.

295. The term used in the indictment being *Halákat* or homicide, the offence charged being described as manslaughter in the margin of the letter of reference; and it appearing that the prisoner had been irregularly tried on a charge of murder, of which offence the Judge of Circuit deemed him convicted; the proceedings were returned, with directions that the trial should be held in the mode prescribed for murder, and that a fresh defence should be taken from the prisoner as to the murderous intent charged, and a fresh *Futwa* taken from the law officer on that point, the evidence already taken being deemed sufficient for the prosecution; but the prisoner to be permitted to summon any other witnesses in his own defence. *Mt. Sheokoeree* v. *Ram Singh Rajpoot.* 25th Sept. 1828. 3 N. A. Rep. 188. —Leycester & Rattray.

296. The prisoner was charged with perjury, and convicted of embezzlement, and sentenced by the Circuit Judge to five years' imprisonment. The proceeding was held by the Nizamut Adawlut to be irregular, and the sentence annulled. *Government* v. *Nunnoo Tirundaz.* 19th May 1829. 3 N. A. Rep. 234.—Leycester & Rattray.

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[1] But see Sec. 6. of Reg. IV. of 1822.

297. The prisoner having been committed on a charge of "severe wounding;" it was held that it was not competent to the Commissioner to convict and sentence him for the more serious offence of "wounding, with intent to murder:" and the Court being of opinion that the prisoner ought to have been committed on the latter charge, annulled the former commitment and proceedings on the trial, and ordered him to be committed and tried *de novo* for the graver offence of "wounding, with intent to murder." *Government* v. *Hurrochunder Chuckerbutty*. 20th July 1831. 4 N.A. Rep. 59.— H. Shakespear & Turnbull.

298. The prisoners having been charged with "theft, attended with severe wounding," the Session Judge, considering them guilty of being "concerned in an affray," would have sentenced them accordingly. But it was held, that as the prisoners could not be convicted of an offence for which they had not been tried, they were entitled to their release. *Government* v. *Choonee*. 27th Aug. 1833. 4 N. A. Rep. 246.—Rattray.

299. Held, that a prisoner charged with culpable homicide cannot be convicted of being an accomplice in an affray, the conviction being founded on the same transaction as that which gave rise to the charge. *Mohur Pandeh* v. *Sheodyal Pandeh*. 12th Sept. 1836. 5 N. A. Rep. 28.—Braddon.

300. The prisoner was charged with murder, but convicted by the Session Judge of theft, attended with murder. The Court held that the conviction was technically wrong; but having the power to pass sentence on the prisoner for either offence, they did not, under the circumstances of the case, deem it necessary to return the proceedings to the Session Judge for re-trial, and sentenced the prisoner to imprisonment for life. *Sheodyal Pande* v. *Jhuria Boonia*. 3d March 1837. 5 N. A. Rep. 53.—Hutchinson.

301. On the principle that a prisoner cannot be convicted of an offence to which he has not been called upon to plead, the Court refrained from convicting a prisoner of wounding, with intent to kill, because the Session Judge, in calling on him to plead, omitted to state to him that part of the charge which denoted the aggravating circumstances of his crime. *Government* v. *Sheikh Muddun*. 18th Jan. 1840. 5 N. A. Rep. 162.—Reid & Lee Warner.

39. *Infanticide.*

302. A prisoner was convicted of destroying his infant daughter, and sentenced to suffer death. It appearing that the proclamation for restraining the murder of new-born children, directed by Sec. 11. of Reg. III. of 1804, had not been published in the *Pergunnah* in which the prisoner resided, and the Magistrate had but recently interfered in the police of the *Pergunnah*, so that it was not improbable that he might have been ignorant of the prohibition of the British Government, the Court recommended the Government to pardon him, which was done. *Government* v. *Bussawun*. 26th March 1810. 1 N. A. Rep. 209.—Harington & Fombelle.

40. *Insanity.*

303. A prisoner was convicted of wounding six persons, and a plea of insanity being overruled, he was sentenced to imprisonment for life. In cases of homicide, maiming, and wounding, suspicion of temporary derangement is sufficient to bar *Kisás* and *Díyat*, but does not preclude the imprisonment of the offender to prevent danger to society.[1] *Government* v. *Bhuwun Singh*. 1st April 1818. 1 N. A. Rep. 357.—Fendall.

304. A prisoner was charged with murdering a boy for his ornaments; but appearing to be insane at the time of his trial, was ordered into confine-

[1] The discretionary power of the Nizamut Adawlut, in similar cases, has been subsequently enlarged by Sec. 7. of Reg. IV. of 1822.

ment, with instructions that, on recovery of his reason, the evidence taken against him should be explained to him, his defence taken, and the law officer called upon for a fresh *Futwa*. *Ajoodhea Pershad* v. *Zora*. 17th Feb. 1820. 2 N. A. Rep. 12.—Leycester & Goad.

305. In a case of supervenient insanity after the commission of murder perpetrated by the prisoner while sane, the Court did not think fit to apply the rule contained in Reg. IV. of 1822, the offence having been committed long prior to that enactment; but, deeming the prisoner unfit to be set at liberty, directed his detention. *Suroopchund Agurdanee* v. *Oodit Agurdanee*. 31st July 1822. 2 N. A. Rep. 189.—Leycester & Dorin.

306. The same rule was applied in *Government* v. *Bunwaree*. 9th Jan. 1823. 3 N. A. Rep. 233.—Goad & C. Smith.

307. The prisoner was proved to have beaten a girl on the head with a stone, which caused her death. No malice being proved, or probable cause assigned, and the prisoner becoming mad shortly after, the Court attributed the act to insanity, and directed his detention. *Arjoon Manjhee* v. *Lukhun Manjhee*. 1st May 1823. 2 N. A. Rep. 260.—C. Smith & Dorin.

308. Under the Court's Circular Orders, it is not necessary to refer the cases of insane persons charged with murder where the fact of killing may not be proved. *Mt. Lotia* v. *Goolaboo*. 21st April 1825. 2 N. A. Rep. 383.—C. Smith & J. Shakespear.

309. A prisoner was convicted of being an accomplice in murder, and his standing mute was held to be by way of contempt. In case of a prisoner standing mute, it is not sufficient, under the Circular Orders, that the deposition of the surgeon be taken as to his sanity or otherwise; but he should be examined specifically as to the cause of his standing mute. Sentence, imprisonment for life. *Government* v. *Kandharee and another*. 24th Sept. 1825. 2 N. A. Rep. 416.—C. Smith & H. Shakespear.

310. In all trials for crimes which are referrible to the Nizamut Adawlut, even if the sentence be declared by the *Futwa* to be barred in consequence of the insanity of the prisoner, the proceedings must be referred for revision and final sentence of the Court under the Circular Orders. *Government* v. *Gopal Dass*. 7th Dec. 1833. 4 N. A. Rep. 264.—J. Shakespear.

311. The prisoner was put on his trial when in a state of insanity, contrary to the Circular Orders, and acquitted by the Session Judge. The Court quashed the trial, and directed the local authorities to proceed in the manner prescribed by the Circulars. *Government* v. *Moulvee Addool Allee*. 18th June 1839. 5 N. A. Rep. 138.—Reid & Tucker.

41. *Intoxication, offences committed in a state of.*

312. In cases of homicide and wounding, a plea of intoxication is not admitted, by the Muhammadan law, to bar exemplary punishment; but in the present case, the special circumstances, particularly the youth of the prisoner, who was only seventeen years of age, were considered a ground of mitigation by the Nizamut Adawlut. Sentence, imprisonment for seven years. *Seedharee and others* v. *Mehrbaun*. 31st Aug. 1812. 1 N. A. Rep. 247.—Harington & Fombelle.

42. *Jurisdiction.*

313. The prisoners were convicted of proceeding armed from the territory of the Company, and committing a robbery, attended with murder, in the territory of Sumroo Begum, and sentenced to imprisonment for life.[1] *Go-*

[1] The prisoners were not sentenced to the punishment of murder, that crime having been committed out of the jurisdiction of the Court. But heinous crimes committed in foreign territories by subjects of the British Government have since, by Reg. V. of 1809, been made cognizable.

vernment v. *Khuruk Sein and others.* 21st July 1807. 1 N. A. Rep. 153. —H. Colebrooke & Fombelle.

314. In cases of property being plundered or destroyed, the power of the Criminal Courts is restricted to the punishment of the offenders for a breach of the peace, and they are expressly prohibited from adjudging pecuniary compensation, or damages, for losses sustained, which must be sued for by the suffering party in the Civil Courts. *Appoo Pillay* v. *Moottoo Sadaseva Moodely.* Case 18 of 1817. 1 Mad. Dec. 192.—Scott & Greenway.

315. The offence of *Dacoity* taking place within the British territory, and part of the plundered property being found in the prisoner's house out of the British territory, this was not considered sufficient proof of receipt within the British jurisdiction. Sentence, released. *Mt. Hureea* v. *Jumai and others.* 22d May 1821. 2 N. A. Rep. 80.—C. Smith & Dorin.

316. A person born in wedlock at Madras, his father being a German, and his mother a Scotchwoman, was declared by the Advocate-General to be a British subject, and amenable only to the Supreme Court; but the *onus probandi* as to his birth rests with the prisoner. *Government* v. *Mandeville.* 24th Nov. 1821. 2 N. A. Rep. 111. —C. Smith, Goad, & J. Shakespear.

317. A person was charged with enticing away a boy, and robbing and attempting to strangle him. Held, that the robbery and attempt to strangle having occurred in Tirhoot, the trial should take place in that district, and not in Behar, out of which the boy was enticed. *Jethun* v. *Khekur.* 2d Oct. 1822. 2 N. A. Rep. 205.—C. Smith & Dorin.

318. It is not competent to a Magistrate, without reference to the Nizamut Adawlut, to commit individuals to take their trials for whom he had obtained a conditional pardon from the Court; but he having done so, it is competent to the Judge of Circuit to renew the offer of pardon. *Mt. Pance* v. *Urjoon Bisral and others.* 17th Sept. 1823. 2 N. A. Rep. 289.—Leycester, C. Smith, and J. Shakespear.

319. Held, that the Nizamut Adawlut is competent to impose fines to an indefinite amount, commutable to a limited period of imprisonment. *Government* v. *Gungagobind Bunhoojea and others.* 15th Dec. 1823. 2 N. A. Rep. 304.

320. The prisoners were tried for robbery and murder by *Thuggí;* but the crime having been committed in an independent territory, and the authority for the trial of the prisoners required by Reg. V. of 1809 not having been previously obtained, the trial was held to be illegal, and annulled, and the Magistrate ordered to apply for permission to commit the prisoners for re-trial at the ensuing Sessions. *Chynsookh* v. *Umra Lodh and others.* 18th May 1825. 2 N. A Rep. 393. —C. Smith & Scaly.

321. Held that a British subject, committing an offence in a foreign territory, being seized in such territory, and forcibly brought into the British provinces, is not amenable to the Company's Courts under the provisions of Reg. V. of 1809, those provisions giving jurisdiction only when a person charged with having committed an offence in any place out of the limits of the British provinces should be found in any part of such provinces. The proceedings were quashed as irregular; and the Court ordered that the prisoner should be taken back to the place where he had been apprehended, and there enlarged; and that he should be brought to trial *de novo*, in the event of his being found thereafter in any part of the British territory.[1] *Government* v. *Ramhuns.* 28th Nov. 1827. 3 N. A. Rep. 90.—Leycester & Scaly.

322. A British subject, having been domiciled in a foreign territory for a period of three years, and there committing an offence, was delivered up

[1] See *infra* Pl. 327

by the ruler of the foreign territory as a British subject, and the Vice-President in Council sanctioned his being brought to trial; but the Court held that they could exercise no jurisdiction, and passed the same order as in the preceding case. *Sheikh Manick* v. *Pranoollah.* 17th Jan. 1828. 3 N. A. Rep. 95.—Leycester & Sealy.

323. The Company's Courts have no jurisdiction over offences committed by foreigners in a foreign territory, nor over British subjects, if apprehended in such foreign territory. The same order was passed as in the two preceding cases. *Government* v. *Ashrufa and others.* 7th Feb. 1828. 3 N. A. Rep. 110.—Leycester & Turnbull.

324. Property plundered in a *Dacoity* having been found in the houses of two persons who were natives and inhabitants of the Oude territory, the Court determined that they were not amenable to the Company's Courts for the offence of receiving plundered property, it being presumable that the offence was committed where the property was found, and not where the *Dacoity* was perpetrated. Sentence, acquittal. *Government* v. *Tunsook and others.* 21st May 1828. 3 N. A. Rep. 149.—Leycester, Turnbull, & Ross.

325. The prisoner being an inhabitant of a foreign territory, and charged with an offence committed in that territory, was held not to be amenable to the Company's Courts, on the ground of his claiming property situated within the British territory. Sentence, acquittal. *Dhunoo* v. *Jurbundhun.* 11th June 1828. 3 N. A. Rep. 151.—Leycester & Turnbull.

326. The prisoner having been convicted of receiving stolen property, which was found in his house, within the jurisdiction of the Supreme Court, the Nizamut Adawlut determined that the offence was not cognizable by the Calcutta Court of Circuit. *Mt. Banoo* v. *Ashgur Khunsaman.* 16th July 1828. 3 N. A. Rep. 163.—Leycester & Rattray.

327. A subject of the British Government committing a crime in a foreign territory, and forcibly brought into the British jurisdiction, was held not to be amenable to the Company's Courts under the provisions of Reg. V. of 1809, because those provisions give jurisdiction only when the British subject so charged shall be found in any part of such (British) territory. The Court, therefore, proposed to direct the prisoners to be delivered over to the nearest *Aámil* of the foreign territory (Oude), the Magistrate making over to that officer a copy of the proceedings held in their cases, taking his official receipt for the same, and furnishing the Resident at Lucknow with a statement of the transaction, in order that he might adopt the necessary measures to secure the punishment of the offenders; and the Government having sanctioned the measure, the necessary orders were issued. *Government* v. *Lulack Singh and others.* 3d April 1829. 3 N. A Rep. 218.—Court at large.

328. It appearing that the prisoner, a native of a foreign territory (Rampore), had committed the crime in that territory, the Nizamut Adawlut, with the sanction of Government, directed the same course to be pursued as in the preceding case, and the prisoner was made over to the Rampore Government.[1] *Sevarain* v. *Wuzeerah.* 3d April 1829. 3 N. A. Rep. 220.—Court at large.

329. A Commissioner is not competent to admit a prisoner, who has been put upon his trial before him, to give evidence as an approver. In a case in which this had been done the

[1] These cases gave rise to the enactment of Reg. VIII. of 1829, whereby "the rules contained in Reg. V of 1809, and Sec. 6. of Reg. I. of 1822, are declared applicable to native subjects of the British Government charged with criminal offences committed in places out of the limits of the British provinces, who shall be delivered into the custody of a Magistrate in any of those provinces whensoever such British subject may have been apprehended."

Court annulled the proceedings as regarded the prisoner, and directed that he should be tried on the charge on which he had been committed by the Magistrate. The prisoner was subsequently tried and convicted of being an accomplice in the murder and robbery charged. *Choonar Lal* v. *Kuchowa and others.* 7th May 1831. 4 N. A. Rep. 32.—Ross & H. Shakespear.

330. A Magistrate who has not taken the oath of qualification of Justice of the Peace can take cognizance of complaints against European British subjects to the extent specified in the 53d Geo. III., and his proceedings in such cases are not open to review by the Court of the Commissioner. *Akbur Ali* v. *Mohun Chunder Battoorjeah and another.* 12th June 1831. 4 N. A. Rep. 41.

331. A trial having been held in Assam before the magistrate, and referred to the Nizamut Adawlut by the Commissioner, on a revision of the Magistrate's proceedings without holding a fresh trial; it was held that it was competent to the Court to pass sentence on the prisoner in the absence of such trial by the Commissioner. *Government* v. *Kesundow and others.* 25th July 1835. 5 N. A. Rep. 8.—Shakespear.

332. A police *Barkandáz* being charged with taking a bribe of Rs. 3, and committed to take his trial for that offence, the Court held that the Magistrate was himself competent to dispose of the case, and quashed the trial. *Lal Mahomed* v. *Ameer Burhundaz.* 10th Dec. 1836. 5 N. A. Rep. 43.—Rattray & D. C. Smyth.

333. A Magistrate is not competent to recall an offer of pardon, under Reg. X. of 1824, made to one of the prisoners in a case of *Dacoity,* and duly accepted; but he is bound to report to the Session Judge the non-fulfilment of the conditions, and to be guided by the instructions of that authority. *Jumal Oostagur* v. *Roopchand Baydee and others.* 9th Oct. 1837. 5 N. A. Rep. 76.—Hutchinson.

334. On the trial of the prisoner, a *Moonsiff,* charged with corruption, it appeared that the Civil Judge conducted the whole of the preliminary inquiry on the commitment of the prisoner, leaving it to the Magistrate only to submit the proceedings to the Sessions Court. Held, that the Judge should have confined himself to a preliminary inquiry, and have ordered the Government pleader to prefer a charge of corruption before the Magistrate. The Court accordingly quashed the proceedings, and directed the Judge to follow the course indicated. *Government* v. *Abool Hussen.* 20th Dec. 1839. 5 N. A. Rep. 151. —Dick, and Court at large.

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43. *Justifiable Homicide.*

335. A prisoner was acquitted of the charge of murder by the law officer and the Court, on his own confession, the only evidence against him setting forth that he killed the deceased under the supposition that he had come to rob his house. *Keshob Chung* v. *Neemaee.* 1st May 1805. 1 N. A. Rep. 22.—H. Colebrooke & Fombelle.

336. The prisoners were acquitted of the charge of murder, having killed the deceased while committing robbery and carrying off their property. *Government* v. *Muhee and another.* 29th Dec. 1832. 4 N. A. Rep. 197. —Rattray.

337. A party defended his house against a wanton and unprovoked assault, during which two of the assaulting party were killed. Held, that the homicide was justifiable on the part of those who acted on the defensive. *Government* v. *Moongha Khan and others and Kutab Khan and others.* 2d Dec. 1835. 5 N. A. Rep. 15.—Rattray & Stockwell.

338. The prisoner, a *Chóhidár,* killed a person in the act of committing a burglary. Held, under the circumstances of the case, that the homicide was justifiable, and the prisoner was accordingly released. *Go-*

vernment v. *Dyal Chowkeedar*. 20th Jan. 1837. 5 N. A. Rep. 44.—Hutchinson.

339. The prisoner, a *Chókídár*, detected four men in the act of breaking into a house at night, and chased the burglars, who, immediately on detection, ran away. Two of them returned and attacked the prisoner, who killed one of them. Held, that the homicide was justifiable, and the prisoner was ordered to be released. *Government* v. *Gurbhoo Chowkeedar*. 7th Dec. 1839. 5 N. A. Rep. 150. —Reid.

340. The law officer of the Nizamut Adawlut declared the homicide justifiable, the prisoners having killed the deceased on sudden irritation at finding him in bed with their sister. The Court concurring, released the prisoners.[1] *Mt. Ujoodhee* v. *Gopeenath and another*. 29th Oct. 1805. 1 N. A. Rep. 74.—H. Colebrooke & Harington.

341. The prisoner was held, by the law officer of the Nizamut Adawlut, justified in slaying his sister and her paramour in the act of adultery. The Court concurring, released the prisoner. *Government* v. *Gholam Mullik*. 20th Sept. 1820. 2 N. A. Rep. 48. — Goad & C. Smith.

342. The prisoners (Hindús) were tried for the murder of a Muhammadan, who had been carrying on an intrigue with the sister of one of them. The Court considered this almost to amount to a case of justifiable homicide under the Muhammadan law; and, with reference to all the circumstances of the case, and the provocation given, sentenced the principal to imprisonment for life, and the accessary to imprisonment for seven years. *Government* v. *Doolaul Rajbungsee*. 14th April 1832. 4 N. A. Rep. 130.—J. Shakespear & Walpole.

343. The prisoner was acquitted of murder, in having, under the influence of gross provocation, in consequence of dishonour done to his family by the forcible violation of his sister by the deceased, wounded him with a sword, which caused his death a fortnight after. *Juggun Sing* v. *Shewchurn Sing*. 24th Nov. 1838. 5 N. A. Rep. 99.—Rattray.

344. The prisoner killing his wife, and a man in the act of adultery with her, the homicide was considered justifiable by the law officer and the Court, and the prisoner was released. *Government* v. *Thundee*. 4th Dec. 1806. 1 N. A. Rep. 130.—Harington & Fombelle. *Chanda Singh* v. *Bhuja*. 15th May 1822. 2 N. A. Rep. 171.—Court at large. *Government* v. *Chait Ram*. 14th July 1825. 2 N. A. Rep. 408. — Seely & J. Shakespear. *Government* v. *Manick Muthoo*. 18th Sept. 1832. 4 N. A. Rep. 168.—Walpole.

345. The prisoner killed his wife, finding her in bed with the prosecutor, and also the mother and brother of the prosecutor on their interfering to save the prosecutor. The law officer of the Nizamut Adawlut considered the killing of his wife justifiable, but convicted the prisoner of erroneous homicide in killing the other two; and declared him liable to *Díyat*, and discretionary punishment by *Síyásat*. The Court concurring with the *Futwa*, sentenced the prisoner to two years' imprisonment. *Kuramut Khan* v. *Ghoosoo*. 9th July 1807. 1 N. A. Rep. 151.—Harington & Fombelle.

346. A prisoner was acquitted of the murder of his wife and her paramour, whom he found sleeping toge-

[1] *Imám Muhammad* holds that it is a condition to justify homicide in cases of whoredom, or intention to commit whoredom, that there be no other means of prevention; whereas it is lawful, according to *Abú Hanífah*, to kill, without any previous warning, persons seen in the act of whoredom, or about to commit it, either with a near connection or with a female slave. Distinctions seem to have been made between whoredom with a relation and a strange woman. But to justify homicide when the person slain is not seen in the act of whoredom, he must be found in the house of the husband, master, or relation.

ther. *Jey Ram Mahato* v. *Chonna Ram Koeri.* 10th Jan. 1840. 5 N. A. Rep. 158.—Lee Warner & Braddon.

347. The law officer of the Nizamut Adawlut considered the prisoner justified in killing the deceased, finding him in a situation which warranted the presumption that he was attempting to commit adultery with his wife. The Court concurring with the *Futwa*, released the prisoner. *Mt. Bhoeen* v. *Rooder.* 30th July 1807. 1 N. A. Rep. 156. — Harington & Fombelle.

348. The law officer declared the prisoner justified in slaying a person whom he detected in the act of adultery with his wife, though he was aware of his wife's elopement, and of her living in a state of adultery with the deceased. The Court concurring, directed the release of the prisoner. *Mt. Panchee* v. *Gocul Naik.* 26th April 1814. 1 N. A. Rep. 298.—Fombelle & Rees.

349. The prisoner killed the deceased, having lain in wait for that purpose, while sleeping with the prisoner's wife, who had, with his knowledge, been living with the deceased for a period of thirteen years. The law officer of the Nizamut Adawlut deemed the act of the prisoner justified; but the Court convicted the prisoner of wilful murder under circumstances of peculiar aggravation, and sentenced him to suffer death. *Government* v. *Kummur oo Deen.* 29th Oct. 1819. 1 N. A. Rep. 389.—Rees & Goad.

350. A prisoner was convicted of the murder of the wife of his brother; but the presumption being that he put her to death while in the act of adultery, this, though it did not justify the prisoner, was held to extenuate his guilt, and he was accordingly sentenced to imprisonment for life. *Government* v. *Bukshea Dhanook.* 24th Sept. 1825. 2 N. A. Rep. 419. — C. Smith & J. Shakespear.

351. The only evidence against the prisoner being his confession that he killed the deceased in the act of adultery with his (the prisoner's) wife, the Court held that the confession must be taken altogether, and the prisoner released. *Chunna* v. *Purshadooa.* 24th May 1826. 2 N. A. Rep. 456. —Leycester & Dorin.

352. The law officer of the Court of Circuit having found the fact that a man was killed by the prisoner while in the act of adultery with the prisoner's wife, declared him liable to *Diyat* for the homicide, though it was justifiable. The Court deeming the *Futwa* to be contradictory, directed the release of the prisoner. *Wuzeer* v. *Moosun Gwala.* 6th Aug. 1828. 3 N. A. Rep. 169.—Turnbull & Leycester.

353. Of two prisoners, No. 1 was charged with murder; but the Court, on the presumption that the deceased met his death while carrying on an adulterous intercourse with his (the prisoner's) wife, ruled that the deliberate cruelty and torture inflicted upon the person of the deceased rendered the prisoner deserving of severe punishment, and accordingly sentenced him to imprisonment for life. No. 2 was acquitted and released. *Mt. Jhaprie* v. *Pucha and another.* 8th March 1834. 4 N. A. Rep. 292.—J. Shakespear & Braddon.

354. The prisoner destroyed his wife and her paramour, whom he found in the act of adultery. The homicide would have been held to be justifiable but for certain acts of aggravation on the part of the prisoner. Sentence, imprisonment for two years, and a fine of Rs. 100, commutable to labour. *Government* v. *Jaggernauth Deogurrea.* 29th June 1837. 5 N. A. Rep. 65. — Hutchinson & D. C. Smyth.

355. The prisoner killed the deceased under strong grounds of provocation, for the violation of his wife, though he did not find him in the act. The Court held that the imprisonment already undergone by the prisoner was fully adequate to his offence, and directed his release. *Go-*

vernment v. *Dhoondhye.* 26th Aug. 1837. 5 N. A. Rep. 71.—Rattray & D. C. Smyth.

356. The prisoner detecting his wife in the act of adultery at a short distance from his own house, went back to his house for a sword, with which he returned; and finding the parties still in the position in which he left them, wounded the adulterer and a woman who acted as procuress, and killed his wife. Sentence, released. *Government* v. *Muddun Patur.* 30th June 1838. 5 N. A. Rep. 90.—Rattray & Braddon.

357. The law officer of the Court of Circuit convicted the prisoner of *Katl-i-umd,* but declared *Kisás* barred by a strong doubt whether the homicide was not justifiable, and *Díyat* only incurred. The Court, in concurrence with the *Futwa* of the law officer of the Nizamut Adawlut (which found that the prisoner had caused the death of the deceased in defence of her honour, and declared her justified), directed the release of the prisoner. *Moloohram* v. *Mt. Bochun.* 13th May 1829. 2 N. A. Rep. 233.—Leycester.

358. The law officer of the Nizamut Adawlut found that the prisoner killed the deceased in self-defence, in an attack on him by the deceased, occasioned by jealousy, and declared him entitled to his release. The Court concurring, released the prisoner. *Government* v. *Hagroo Naik.* 14th April 1832. 4 N. A. Rep. 132.—Walpole.

359. Of several prisoners, No. 1 confessed that he killed the deceased in attempting to ravish the prisoner No. 2, the wife of his master; No. 2 declared that the deceased attempting to ravish her, she cried out, and that No. 1 came to her assistance and slew the ravisher; Nos. 3 and 4 assisted in concealing the body. The law officer of the Nizamut Adawlut declared Nos. 1 and 2 entitled to their release, and Nos. 3 and 4 liable to slight punishment by *Tazír.* The Court acquitted and released Nos. 1 and 2; and though considering Nos. 3 and 4 liable to punishment, did not sentence them to any imprisonment beyond what they had already undergone. *Munsaram Rajpoot* v. *Muna.* 22d July 1812. 1 N. A. Rep. 240.—Burgess.

360. The prisoners having killed a *Barkandáz,* after the deceased and another *Barkandáz* had in cold blood put to death a villager, whom they had seized on a criminal charge, after they had slain a person who came to his rescue, and while they were under no reasonable apprehension, the Court, deeming the homicide justifiable, released the prisoners. *Government* v. *Hurdeo and others.* 19th June 1824. 2 N. A Rep. 327.—J. Shakespear & Ahmuty.

361. In a case of assault and wounding, referred to the Nizamut Adawlut by the Judge of Circuit, on a doubt as to whether certain of the prisoners, who were *Sepoys,* were not justified, they having acted under the order of a *Jamadár,* their superior officer, the case was returned for sentence, and the Judge informed, that though the fact noticed might operate in mitigation of punishment, it could not justify a gross infraction of the peace. *Bhowanny Pershad and another* v. *Moonowur and others.* 28th April 1828. 3 N. A. Rep. 128.—Leycester & Turnbull.

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44. *Killing Sorcerers and Witches.*

362. A prisoner was convicted of *Katl-i-umd,* in having killed the deceased under the impression that he was a sorcerer, and that his wife, son, and father had been destroyed by his magic spells; but the sentence of death, to which the prisoner was liable under the provisions of Sec. 34. of Reg. VII. of 1803, was mitigated by the Court, under all the circumstances of the case, to imprisonment for three years. *Mt. Ladhoo* v. *Sheikh Saadut.* 20th April 1816. 1 N. A Rep. 318.—Fombelle & Ker.

363. A native of Chota Nagpore

was convicted of aggravated culpable homicide of the deceased, who met her death in consequence of ill-usage and confinement by the prisoner, or under his orders, under the imputation of being a witch. Sentence, imprisonment for seven years. *Ruttun* v. *Jugjeet Singh.* 22d July 1822. 2 N. A. Rep. 188.—Dorin & C. Smith.

364. A prisoner was convicted of wilful murder in killing a person for the supposed exercise of witchcraft by him; but capital punishment was remitted by the Court, in consideration of the circumstances of the case and the uncivilised part of the country (Kumaoon) in which the crime was committed. Sentence, imprisonment for life. *Nuthoo Brahmin* v. *Keshwa Dome.* 31st Aug. 1822. 2 N. A. Rep. 196.—Leycester & Goad.

365. A Garrow of North-East Rungpore was convicted of the murder of the deceased, who, with his family, were destroyed on suspicion that they practised witchcraft. Taking into consideration the uncivilised state of the country where the crime was committed, and the possible evil tendency of capital punishment, the Court deemed it proper to mitigate the sentence to imprisonment for life. *Mt. Sulmee* v. *Denook Garrow.* 30th March 1822. 4 N. A. Rep. 128.—Walpole.

366. A prisoner was convicted of the murder of two women (his sisters), under a conviction that his two brothers had died in consequence of the charms and incantations practised on them by those he killed. The Court, adverting to the extreme superstition of the people of Chota Nagpore, sentenced the prisoner to imprisonment for life. *Government* v. *Chunder.* 14th Jan. 1833. 4 N. A. Rep. 221.—J. Shakespear.

367. Where a Garrow was convicted of the murder of a man, under the impression that he had transformed himself into a tiger, and carried off his (the prisoner's) daughter; the extreme superstition of the Garrows was considered to form good grounds for mitigation of punishment. Sentence, imprisonment with labour for seven years. *Rickson Garrow* v. *Churrun Garrow.* 21st Feb. 1833. 4 N. A. Rep. 224.—H. Shakespear.

368. The prisoner, a Garrow, was convicted of killing the deceased, supposing him to have caused the deaths of his wife and daughter by witchcraft. A *Panchâyit* of five Garrow chiefs declared that by such act the prisoner had committed no offence; and, under the circumstances, the prisoner was sentenced to imprisonment for seven years. *Government* v. *Ramrung.* 9th Jan. 1836. 5 N. A. Rep. 19.—Halhed.

369. A prisoner was convicted of having killed a woman, under the impression that she was a witch, and sentenced to imprisonment for life, as the offence had been committed in a part of the country in which, though the belief of sorcery was prevalent, the crime had been expressly declared to be murder, and punishable as such. *Government* v. *Damoo.* 12th Nov. 1836. 5 N. A. Rep. 35.—D. C. Smyth & Braddon.

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45. *Kisás.*

370. Retaliation for homicide is not demandable under the Muhammadan law of *Kisás* when a person is killed at his own request; but discretionary punishment may be inflicted in such cases, which is provided for by Sec. 3. of Reg. VIII. of 1799, and Sec. 16. of Reg. VIII. of 1803. *Government* v. *Hurgovind.* 9th Jan. 1805. 1 N. A. Rep. 1.—H. Colebrooke & Harington.

371. *Kisás* is barred in wilful homicide by plea of adultery. *Government* v. *Sonaram.* 12th Jan. 1805. 1 N. A. Rep. 5.—H. Colebrooke & Harington.

372. Death occasioned by a blow with the wooden handle of an axe, or other similar instrument, is not considered by Muhammadan lawyers to be wilful homicide; nor is it by *Abú Hanífah,* if the blow be struck with

the iron back of the instrument. But *Abú Yúsuf* and *Imám Muhammad* maintain it to be equally murder, whether occasioned by the iron back of such instrument or the edge of it. *Ib.*

373. Retaliation (*Kisás*) is considered as a private right devolving on the heirs of the person murdered. The evidence, therefore, of near connexions is insufficient legal proof for a sentence of *Kisás*, but sufficient, in corroboration of other evidence, for conviction on strong presumption, as well as for a sentence of discretionary punishment. *Government* v. *Hurrah.* 22 Jan. 1805. 1 N. A. Rep. 7.—H. Colebrooke & Harington.

374. *Kisás* being the private right of the person murdered, and devolving on his legal heirs, when the heir of the slain was the child of the murdered woman, and also the child of the prisoner, the enforcement of *Kisás* was held to be barred by the regard allowed to parentage. This, however, has been provided for by Sec. 2. of Reg. VIII. of 1799, and Sec. 15. of Reg. VIII. of 1803, which authorize the Court of Nizamut Adawlut to pass a capital sentence in such cases. *Government* v. *Bula.* 8th May 1805. 1 N. A. Rep. 24.—H. Colebrooke & Fombelle. *Government* v. *Rampershad.* 24th April 1800. 1 N. A. Rep. 103. *Hapoo* v. *Pullanoo.* 1st July 1812. 1 N. A. Rep. 231.—Harington & Burges.

375. Where the evidence is merely presumptive, sentence of *Kisás* is barred. *Doorga* v. *Sunkur Jogee.* 4th March 1805. 1 N. A. Rep. 11.—H. Colebrooke & Harington.

376. To warrant a sentence of *Kisás* in cases of murder, the Muhammadan law requires either the confession of the accused, or the testimony of two competent eye-witnesses of ascertained or apparent credit. Where such evidence is not adduced, and there appear to be sufficient grounds for conviction, from the whole of the evidence on the trial and the circumstances of the case, the conviction is stated to be upon *Ghálib-uz-zann, Ahbar-ur-ráí, Shibeh-i-hawíy,* or *Shadíd,* meaning strong or violent presumption. *Bulram Chung* v. *Balik Ram.* 9th May 1805. 1 N. A. Rep. 26.—H. Colebrooke & Fombelle.

377. *Kisás* was held to be barred by the terms of the prisoner's confession, which did not state the prisoner to be the active perpetrator of the murder; but he was declared liable to discretionary punishment, extending to death. *Runnoo* v. *Bhyrub Rae.* 25th July 1805. 1 N. A. Rep. 35.—H. Colebrooke & Harington.

378. The deceased, having detected the prisoner in the act of adultery with his wife, killed her, and, attacking the prisoner with the same weapon, was stabbed to death by the prisoner in self-defence. The law officers declared, that as the deceased was justified in putting the prisoner to death, the prisoner acted illegally in opposing him; and having shed his blood, was liable to *Kisás* at the demand of the heirs. But that if the deceased attacked the prisoner after he had ceased to commit the criminal act of adultery, *Kisás* would be barred, and the prisoner liable to discretionary punishment. *Government* v. *Dhununjee.* 9th July 1805. 1 N. A. Rep. 39.—Harington & Fombelle.

379. The plea of adultery was not held, by the law officers, to justify the prisoner killing the deceased in the act of running away; but he was declared liable to *Kisás* on the legal demand of the heirs. *Ruheem* v. *Hisabooddeen.* 25th Sept. 1805. 1 N. A. Rep. 71.—H. Colebrooke & Harington.

380. *Kisás* was held to be incurred by the prisoner killing the deceased on finding his sister in his (the deceased's) house, he being well aware that his sister had quitted her husband's house, and was living in adultery with the deceased. The plea of adultery, in justification of homicide, is confined to cases in which the party slain may have been seen in the act

of adultery, or found in the house of the husband or relative. *Sheikh Mooradun* v. *Mihr Ulee.* 5th Nov. 1805. 1 N. A. Rep. 78.—Court at large.

381. A person finding his wife in bed with a strange man is justified in putting her to death, the situation being such as to afford presumption of adultery. *Kuramut Khan* v. *Ghoosoo.* 9th July 1807. 1 N. A. Rep. 151.—Harington & Fombelle.

382. Attempt to commit adultery with the wife, according to Muhammadan law, justifies the husband in putting to death, at the instant, the person attempting. *Mt. Bhooeen* v. *Rooder.* 30th July 1807. 1 N. A. Rep. 156.—Harington & Fombelle.

383. By the Muhammadan law, the killing of a wife and her paramour, they not being at the time in the act of adultery, subjects the husband offending to *Kisás*, notwithstanding he establish the existence of an adulterous intercourse between the parties. *Government* v. *Rujjooah.* 27th Oct. 1809. 1 N. A. Rep. 197. —Fombelle & Stuart.

384. *Kisás* against a prisoner tried for the murder of his wife was held not to be barred by suspicion of adultery. *Government* v. *Abdoollah.* 21st Sept. 1821. 2 N. A. Rep. 100.—Leycester.

385. Murder by strangling does not render the murderer liable to *Kisás*, according to the doctrine of *Abú Hanífah*, but it is punishable as wilful murder according to the two disciples. *Neel Munee Dos* v. *Gour Dos.* 1st Aug. 1805. 1 N. A. Rep. 41.—H. Colebrooke & Harington.

386. According to the uniform opinion of *Abú Hanífah* and his disciples, killing by poison, in whatever manner it may be given, is not deemed wilful homicide. The fine of blood is payable, as for manslaughter, if the poison be compulsively put by another into the mouth of the deceased. But if the deceased took the poison into his own hands, and ate or drank it without compulsion, though he did know it to be poison, the giver is liable to discretionary punishment only. *Sundun Shah* v. *Joora Shah.* 10th Sept. 1805. 1 N. A. Rep. 58. —H. Colebrooke & Harington.

387. The two disciples, *Abú Yúsuf* and *Imám Muhammad*, consider *Kisás* to be demandable by the heirs of the slain, when death was occasioned by blows with a large club. According to the doctrine of *Abú Hanífah*, the weapon not being considered a mortal one, the prisoner is only liable to *Díyat*, or the price of blood.[1] *Kuma Singh* v. *Umrao.* 20th Sept. 1805. 1 N. A. Rep. 65.—H. Colebrooke & Harington.

388. Homicide by successive blows of a whip or stick does not incur *Kisás*, according to the doctrine of *Abú Hanífah*, but it does according to the doctrine of the two disciples. *Government* v. *Shukoor.* 2d Jan. 1806. 1 N. A. Rep. 95.—H. Colebrooke & Harington.

389. Homicide by compulsion (*Ikráh*), under menaces which induce a fear of death, is not strictly punishable under the Muhammadan law. But the penalty of *Kisás*, according to the opinion of *Abú Hanífah* and *Muhammad*, is transferred to the compeller; and the compelled person is considered rather the instrument than the author of the homicide, yet not altogether free from criminality, as the act is unlawful, and subject to discretionary punishment, if the circumstances of the case appear to require it.[2] *Boodhun* v. *Ratra.* 30th Jan. 1806. 1 N. A. Rep. 101.—Harington & Fombelle.

390. *Kisás* and *Hadd* were held to be barred, there being no eye-wit-

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[1] All opinions appear to agree in considering an intention to kill the essential ground of distinction between *Katl-i-umd*, or wilful murder, and *Shibeh-i-umd*, or wilful-like homicide or manslaughter. The disagreement respects the instruments to be admitted as sufficient evidence of intent to kill. See Harington's Analysis, 261; and 4 Hed. 271.

[2] See Harington's Anal. 258.

nesses, and neither of the prisoners acknowledging himself to be the actual perpetrator of the murder; but they were declared liable to death by *Siyásat*. *Poorna* v. *Nuthoo and another*. 13th Jan. 1810. 1 N. A. Rep. 202.—Fombelle.

391. It was held that *Kisás* was barred, as the prisoner had not attained the age of puberty, but that he was liable to discretionary punishment by *Tazír*. *Jackishen* v. *Mt. Odhaneah*. 11th June 1810. 1 N. A. Rep. 213. *Poorun* v. *Budlooah*. 11th June 1810. 1 N. A. Rep. 215.—Stuart.

392. A person being charged with murder, and the *Futwa* exempting him from *Kisás*, partly on account of the deceased not having been *Zí firásh*, or *bedridden*, from the time of the beating till death ensued; this ground of extenuation, as it affects the nature of the offence, was held not to be within that species of legal exception, under the Muhammadan law, which is overruled by the provisions of Cl. 4. of Sec. 2. of Reg. LIII. of 1803, which apply merely to cases where the penalties of *Hadd* and *Kisás* are barred, under the Muhammadan law, by some special exception, or scrupulous distinction, not affecting the nature or criminality of the offence. *Government* v. *Emaum Buksh*. 1st July 1812. 1 N. A. Rep. 231.—Fombelle & Rees.

393. To warrant a sentence of *Kisás* against the person charged with mortally wounding, it must be established that the wounds were the sole and immediate cause of the death of the deceased. *Mt. Sheo Koonra* v. *Hingun Burkundaz*. 12th July 1813. 1 N. A. Rep. 272.—H. Colebrooke & Fombelle.

394. By the Muhammadan law, homicide by duelling, though wilful, being by mutual consent, does not subject the person committing it to the penalty of murder. But provision is made for such cases, when the prisoner may appear deserving of punishment, by Sec. 3. of Reg. VIII. of 1799, and Sec. 16. of Reg. VIII. of 1805. *Government* v. *Beaufort and others*. 7th Aug. 1813. 1 N. A. Rep. 277.—H. Colebrooke, Fombelle, & Stuart.

395. The *Futwa* declared that *Kisás* is barred in a case of erroneous homicide, whereby a person intending to murder one individual accidentally kills another; but this is provided for by Sec. 2. of Reg. VIII. of 1800, and the prisoner was sentenced to death. *Mt. Motee* v. *Seetul Rai*. 31st May 1815. 1 N. A. Rep. 309. —Fombelle.

396. Suspicion of temporary derangement is sufficient to bar *Kisás* and *Díyat* in cases of homicide and wounding; but does not preclude the imprisonment of the offender to prevent danger to society. *Government* v. *Bhurwun Singh*. 10th April 1818. 1 N. A. Rep. 357.—Fendall.

397. The *Futwa* declared *Kisás* barred by the slain being the daughter of the prisoner, but *Díyat* incurred. This is provided for by Reg. VIII. of 1803. *Government* v. *Ram Lal*. 30th Dec. 1818. 1 N. A. Rep. 370.—Rees. *Government* v. *Boondea*. 24th April 1822. 2 N. A. Rep. 161.—Dorin & C. Smith.

398. *Kisás* was declared to be barred by the *Futwa*, by presumption of legality, which arose from the prisoner's confession that he killed his wife by her own desire; but the prisoner was declared to be liable to full *Díyat*, and discretionary punishment by *Tazír*. *Government* v. *Phuldar*. 22d April 1822. 2 N. A. Rep. 160. —Dorin & C. Smith.

399. The weapon not being found, the *Futwa* declared the prisoner convicted of *Shibeh-i-umd*, or culpable homicide only. But the Court overruled this *Futwa*, and the prisoner was sentenced to death. *Government* v. *Imambuksh and another*. 22d Feb. 1828. 3 N. A. Rep. 106.—Turnbull & Rattray.

400. *Kisás* was declared by the *Futwa* to be barred on the ground of its not being proved which prisoner inflicted the mortal wound;

but the prisoners liable to *Díyat* and discretionary punishment by *Síyásat*, extending to death, and they were ordered for execution accordingly. *Gunra* v. *Kurphool and another*. 21st Aug. 1828. 3 N. A. Rep. 175. —Leycester & Turnbull.

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46. *Maiming and Mutilating.*

401. The prosecutrix entered into a *Muchalkah*, or written agreement with her husband, the prisoner, No. 1, authorizing him to cut off her nose, or otherwise maim her, in the event of her acting improperly. Detecting her in adulterous intercourse, he cut off her nose; and being prosecuted by her, he was convicted of that offence, and sentenced to imprisonment for five years: and No. 2 of aiding and abetting in that offence, to imprisonment for three years. *Mt. Mungree* v. *Dookna and others*. 25th April 1814. 1 N. A. Rep. 296. — Fombelle & Rees.

402. A prisoner was convicted of cutting off the noses of his uncle's widow and her paramour. The prisoner's plea of fornication between the parties did not avail him, he not standing to his uncle's widow in the relation of *Mahram*, one to whom it is permitted to enter the *Haram*, or women's apartment. Sentence, imprisonment in banishment for seven years. *Govurdhun and another* v. *Zorawur Rajpoot*. 16th Dec. 1816. 1 N. A. Rep. 327. — Fombelle & Rees.

403. The prisoner was charged with cutting off the *membrum virile* of the prosecutor. The law officer of the Nizamut Adawlut acquitted the prisoner in consequence of the *Ibráa* of the prosecutor, and the non-age of the prisoner, the wilful act of a person supposed to be in her non-age being, in the Muhammadan law, considered to be (*Khatáa*) accidental. The Court of Nizamut Adawlut did not concur in the *Futwa*, but judged themselves incompetent, under the existing law, to punish, and therefore released the prisoner. Such cases have been since provided for by Sec. 3. of Reg. IV. of 1822. *Juttee Ram* v. *Jye Munnee*. 20th July 1820. 2 N. A. Rep. 29.—C. Smith & Leycester.

404. Convicts under sentence of imprisonment in the Allipore jail were convicted by the law officer of the Circuit Court of cutting off the nose of the prosecutor, the *Bakshí* employed to distribute cowries to the convicts, and declared liable to *Tazír* and *Hukúmat-i-adl*. Held, that Sec. 6. of Reg. IV. of 1822 does not preclude the Judge of Circuit from awarding corporal punishment under Cl. 7. of Sec. 2. of Reg. LIII. of 1803, and the proceedings were accordingly returned. *Anund Chunder Chatoorjea* v. *Deen Ali Shah and others*. 21st Feb. 1825. 2 N. A. Rep. 362. —C. Smith & Sealy.

405. A prisoner was convicted of castrating a boy with his consent, from which operation death ensued; and sentenced, under all the circumstances of the case, to imprisonment for two years. *Government* v. *Tahir Mahomed*. 31st March 1827. 3 N. A. Rep. 17.—Leycester & Sealy.

406. The prisoner was tried for mutilating the ear of a man who had burglariously entered his house, and acquitted, as no guilt was considered to attach to the act. *Government* v. *Buxoollah*. 31st Oct. 1829. 3 N. A. Rep. 285.—Rattray & Sealy.

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47. *Minor.*

407. The wilful act (*Umd*) of a person supposed to be in his non-age, is, in Muhammadan law, considered to be accidental (*Khatáa*). *Juttee Ram* v. *Jye Munnee*. 20th July 1820. 2 N. A. Rep. 29.—C. Smith & Leycester.

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48. *Missing Persons.*

408. A prisoner was convicted of having decoyed away and robbed the son of the prosecutor, and thrown him into the river Bhagrutty, since which he had not been seen; but, from the uncertainty as to the actual death of

the child, the Court sentenced him to imprisonment for life. *Bukshoo* v. *Chamoo*. 2d April 1805. 1 N. A. Rep. 17.—H. Colebrooke & Fombelle.

409. A prisoner was convicted of being an accomplice in gang robbery on a boat, in which it was presumed that a man, in attempting to escape from the robbers, was drowned, though the body was not found. Sentence, transportation for life. *Lochun Khyratee* v. *Gour Gopt*. 10th Feb. 1810. 1 N. A. Rep. 204.—Fombelle.

410. A prisoner was convicted, on violent presumption, of having made away with a boy of seven years of age, whose body had not been found; and was sentenced to be imprisoned until the missing person should be produced, or it should be proved that he died by means not implicating the prisoner. *Jogye Behra* v. *Narain Rowut*. 12th Dec. 1811. 1 N. A. Rep. 226.—H. Colebrooke & Fombelle.

411. A prisoner was convicted, on violent presumption, of having made away with a child, who had not since been seen or heard of, and of stealing his ornaments; and sentenced as in the preceding case. *Hussein* v. *Kulma*. 11th March 1815. 1 N. A. Rep. 305.—Fombelle.

412. The prisoners were convicted of theft, and of having made away with the woman to whom the property belonged, under circumstances exciting strong suspicion that they had murdered her. Sentence, as in the preceding cases. *Ameer Ali* v. *Peerkhan and others*. 14th Sept. 1820. 2 N. A. Rep. 46.—Leycester & Goad.

413. The prisoner having been charged with murder by poison, it was satisfactorily proved that the supposed murdered person, whose body was never found, was last seen in company with the prisoner. Sentence, as in the preceding cases. *Juggoo* v. *Chaitoo Telee* 16th June 1821. 2 N. A. Rep. 84.—Leycester & Goad.

414. The prisoner was convicted of making away with a missing boy for the sake of his ornaments; the finding a skull, recognized as that of the missing boy by a peculiarity in the jawbone, was held not to be sufficient proof of identity to prove the actual murder, and consequently to warrant a capital sentence: he was therefore sentenced as in the preceding cases. *Haubil* v. *Wuzeer Khan and another*. 7th April 1828. 3 N. A. Rep. 122.—Leycester & Scaly.

415. The prisoners were convicted of having attacked and wounded and violently abducted certain persons, who had since been missing. The Court doubting the soundness of former practice in passing conditional sentences in such cases, awarded, in the present instance, twelve years' imprisonment to the principal, and to the other prisoners ten and seven years' imprisonment, according to their respective degrees of guilt. *Joomun* v. *Kebul and others*. 28th March 1838. 5 N. A. Rep. 21.—Rattray & D. C. Smyth.

416. In a trial for murder, in which it appeared that the deceased, whose body had not been found, was last seen in company with the prisoners, and on whom a violent presumption rested of having murdered the deceased, the Court thought it objectionable to adhere to the former practice of passing conditional sentence in such cases, as it tended to throw a doubt on the evidence on which the sentence was grounded, and sentenced the prisoners to imprisonment for life. *Anund Mundul* v. *Thakoor Doss Chucherbuttee and others*. 5th Nov. 1839. 5 N. A. Rep. 147.—Tucker & Dick.

417. The prisoners were convicted, on violent presumption, of pretending to purchase cotton from *A B*, and of fraudulently embezzling the same; there being also strong grounds for suspecting that they had made away with the said individual and two others, who had not since been heard of. Sentence, imprisonment for life. *Government* v. *Hurreepershad Doss and others*. 28th June 1816. 1 N. A. Rep. 324.—Fombelle & Rees.

418. The prisoner confessed to a murder though the body was not found: there were marks of blood, and of rolling or struggling of a body on the spot pointed out by the prisoner as the place where he killed the deceased; and under these circumstances he was sentenced capitally. *Buksh* v. *Babooa Nutt.* 30th April 1823. 2 N. A. Rep. 257.—C. Smith & Martin.

419. The prisoners were convicted of beating a person who had since been missing; but the injury sustained not being deemed by the Court sufficient to cause death, the prisoners were sentenced to imprisonment for one year. *Mt. Kublee* v. *Mohun and others.* 15th Dec. 1823. 2 N. A. Rep. 305.—Leycester & Harington.

420. The prisoners were charged with making away with two individuals, who, with their property, had embarked on board the prisoners' boat, and had not been heard of since last seen in the prisoners' company. They pleaded that the missing persons had parted with them of their own accord; and though they had no evidence to their defence, the Court did not deem the evidence sufficient for their conviction, and accordingly acquitted them. *Hurreenath Sahoo* v. *Mahomed Hoosein and others.* 9th Oct. 1824. 2 N. A Rep. 336.—C. Smith & J. Shakespear.

421. The prisoner was convicted of robbery attended with murder: the body of the deceased not having been found, the prisoner was sentenced to imprisonment for life. *Permodhe Bukhal* v. *Churn Kandoo.* 12th May 1827. 3 N. A. Rep. 43.—C. Smith & Dorin.

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49. *Muhammadan Law, general application of.*

422. In cases where a stated penalty is prescribed for an offence, as well by the Regulations as by the Muhammadan law, the provisions of the latter are superseded. *Fyzoolah* v. *Deo Rai and another.* 10th May 1813. 1 N. A. Rep. 262. — Fombelle & Rees.

423. Held, that the Muhammadan law is not in force in the tract of country under the jurisdiction of the Governor-General's Agent, appointed under Reg. XIII. of 1833, stationed at Hazareebagh. *Jeo Ram Mahata* v. *Chonna Ram Koeri.* 10th Jan. 1840. 5 N. A. Rep. 158.—Braddon & Lee Warner.

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50. *Murder.*

424. A prisoner was convicted of murder under circumstances of extreme provocation from the deceased (after having been forewarned of the consequences by the prisoner), being found in the prisoner's house at night attempting to violate his wife. The prisoner was pardoned at the recommendation of the Court. *Ruheem* v. *Hisabooddeen.* 25th Sept. 1805. 1 N. A. Rep. 71.—H. Colebrooke & Harington.

425. A prisoner was convicted of the murder of his servant, who had forcibly carried off his wife, and had criminal intercourse with her, and whom he suspected of stealing his cattle and setting fire to his house. The Court, taking these circumstances of high provocation into consideration, recommended the prisoner to Government as a proper object of mercy for a mitigated sentence of imprisonment for one year, which was sanctioned, and passed accordingly. *Government* v. *Shukoor.* 2d Jan. 1806. 1 N. A. Rep. 95. — H. Colebrooke & Harington.

426. A prisoner was convicted of murder under great provocation, the deceased forcibly carrying off his sister from his house at night, with an apparent intention of having criminal connection with her. Sentence, imprisonment for three years. *Government* v. *Panchoo Rai.* 26th Nov. 1806. 1 N. A. Rep. 125.—Harington & Fombelle.

427. A woman, and her son, a boy aged nine years, were convicted by

the *Futwa*, the former of the murder of a child for its ornaments, and the latter of aiding in the same. The mother was sentenced to death; and the son, in consideration of his extreme youth, was discharged without punishment, under the discretion left by the *Futwa*. *Laljee* v. *Mt. Soobhanee and another*. 21st July 1807. 1 N. A. Rep. 152. — H. Colebrooke & Fombelle.

428. A prisoner was convicted of the murder of *A B*, in striking him in his own house, whither the prisoner had gone to have criminal connection with *A B*'s wife; no intention to kill being proved, but the blows struck appearing to have been with a view to facilitate his escape on being recognized. Sentence, imprisonment for fourteen years. *Mt. Munnee* v. *Ruhmut Ullah*. 29th March 1808. 1 N. A. Rep. 167.—Harington & Fombelle.

429. A boy, aged fourteen years, was convicted of the murder of a boy of eleven years of age for his ornaments. The *Futwa* declared *Kisás* barred, as the prisoner had not attained the age of puberty, and that he was liable to discretionary punishment by *Tazír*. Sentence, imprisonment in transportation for life. *Poorun* v. *Budlooah*. 11th June 1810. 1 N. A. Rep. 215. —Stuart.

430. A prisoner was convicted of murder. Capital punishment and imprisonment for life were held to be barred, from the fact that the deceased had an adulterous intercourse with the prisoner's wife, and the presumption being that he killed the deceased in the act of adultery. Sentence, imprisonment for two years. *Suddaseb Roodur* v. *Bulram*. 15th March 1819. 1 N. A. Rep. 375.—Fendall & Goad.

431. A prisoner was convicted of the murder of the seducer of his wife. The province of Kumaoon having been recently brought under the British rule, the plea of long established usage, as opposed to the laws lately introduced and imperfectly understood, was admitted in mitigation of punishment. Sentence, imprisonment for five years. *Government* v. *Beerbhan*. 31st May 1819. 1 N. A. Rep. 388.—Fendall & Rees.

432. A prisoner was convicted of the murder of her infant eight months old, by throwing herself and her two children into a well, which caused the death in question, apparently under the influence of sudden anger, excited by a previous altercation with her husband. Sentence, imprisonment for life. *Government* v. *Rumhoo*. 25th Jan. 1821. 2 N. A. Rep. 55.—Leycester & Goad.

433. A prisoner was convicted of the murder of his father-in-law, and wounding his wife, with intent to kill, in consequence of the former taking his daughter home. Capital sentence was remitted, as the prisoner's confession contained a plea which raised a doubt in justification. Sentence, imprisonment for life. *Government* v. *Sheikh Buhadoollah*. 29th July 1829. 3 N. A. Rep. 244.—Leycester & Rattray.

434. The prisoners were acquitted of the murder of two boys. The deceased boys having allowed their cattle to stray on the prisoners' fields, were pursued by the prisoners, and fled towards the river, in which they were found drowned the next day. No crime, under such circumstances, was held to be established against the prisoners. *Woolee Mahomed and another* v. *Sumbhoo Chung and another*. 2d Dec. 1830. 3 N. A. Rep. 361.—Ross & Rattray.

435. The prisoner, aged eighteen years, was convicted of the murder of a child for its ornaments, and sentenced capitally, the plea of youth not being deemed sufficient to bar the sentence passed. *Lallchund Hujjam* v. *Toral*. 31st Dec. 1833. 4 N. A. Rep. 265. — H. Shakespear & Rattray.

436. A prisoner was convicted of the murder of her infant, impelled by starvation and extreme distress, which were considered a sufficient ground for mitigation of punishment.

Sentence, imprisonment for life. *Government* v. *Mt. Indermoney.* 29th July 1834. 4 N. A. Rep. 311. — Rattray & H. Shakespear.

437. A prisoner was convicted of the murder of four boys, apparently under the excitement of fanaticism, and of a fifth person, who attempted to enter the room where the murders were committed. The prisoner was sentenced capitally, in opposition to the *Futwa* of the law officer of the Nizamut Adawlut, which declared *Kisás* to be barred by a doubt as to the prisoner's sanity, and *Díyat* to be incurred. *Government* v. *Akin Shah.* 20th June 1835. 5 N. A. Rep. 4.—Rattray & H. Shakespear.

438. The prisoner, one of the rude race of people in the north of Cachar, was convicted of murder for the sake of the money of the deceased. Sentence, imprisonment in transportation for life. *Government* v. *Kesundow and others.* 25th July 1835. 5 N. A. Rep. 8.—H. Shakespear.

439. The prisoner, a man of eighty years of age, was convicted of the deliberate murder of the *Gumáshtah* of an indigo factory, in consequence of a dispute in the settlement of accounts. Under the circumstances of the case, old age and infirmities were not taken into consideration in mitigation of punishment. Sentence, death. *Chunderpursad Rai* v. *Kaleesunkur Chuckerbutty.* 3d Feb. 1837. 5 N. A. Rep. 45. — D. C. Smyth & C. Smith.

440. The prisoner, a lad of twenty years of age, was convicted of murdering a child for its ornaments, and sentenced to suffer death, notwithstanding his youth. *Gungadhur Sahoo* v. *Govind Sahoo.* 30th Nov. 1840. 5 N. A. Rep. 178.—Rattray & Lee Warner.

51. *Mustámin.*[1]

441. By the Muhammadan law, *Mustámins*, or persons residing in a foreign country, are justified in making reprisals by any means in their power on the sovereign of the country for sums due to them by himself or his subjects, if he refuse to give redress on a representation of the case. *Government* v. *Bhobun Singh and others.* 16th April 1810. 1 N. A. Rep. 360.—Fendall & Rees.

442. By Reg. V. of 1809, such persons, if subjects of the Company, are liable to be tried and punished, as though the offence had been committed within the Company's territory. *Ib.*

52. *Oaths.*

443. All persons (however young) deposing before the Criminal Courts, as prosecutors or witnesses, should be examined on oath, provided they have a sufficient sense of the nature and obligation of an oath. *Sooga Pande* v. *Dookhey and others.* 5th July 1813. 1 N. A. Rep. 271. — Fombelle. *Government* v. *Hatim Ali.* 26th June 1821. 2 N. A. Rep. 85.—Leycester & Dorin.

53. *Pardon.*

444. On a charge of murder, the fact of wilful homicide was established against the prisoners; but it appearing that in Cuttack, where the murder was committed, habits of lawless violence had prevailed with impunity under the late Government of the Mahrattas, and the murder appearing to have been committed on the very day the province was declared subject to the British laws, so that the prisoners (as they pleaded) might have been ignorant of the circumstance, they were discharged without punishment. *Mt. Kumodee* v. *Neelhanth Mug Raj and others.* 12th May 1806. 1 N. A. Rep. 106. — H. Colebrooke & Fombelle.

445. A sentinel, in the service of a Mahratta Chief who was on a pilgrimage to Benares, was convicted of wilful murder, in cutting down a man (supposed to be a thief) who did not answer to a third challenge, in con-

[1] For the law concerning *Mustamins*, see 2 Hed 192.

formity to a general order to that effect from his superior. The prisoner was pardoned, it appearing that he had acted under a mistaken sense of duty. *Government* v. *Sheikh Peer Ali.* 24th Sept. 1807. 1 N. A. Rep. 158.—Harington & Fombelle.

446. A Raj Koomar was convicted of destroying his infant daughter, and sentenced to suffer death. But it appearing that the proclamation for preventing the murder of new-born children, directed by Sec. 11. of Reg. III. of 1804, had not been published in the *Pergunnah* in which the prisoner resided; and that the Magistrate had but recently interfered in the police of the *Pergunnah;* so that it was not improbable that he might have been ignorant of the prohibition of the British Government; the Court recommended to Government to pardon the prisoner, and he was pardoned accordingly. *Government* v. *Bussawun.* 26th April 1810. 1 N. A. Rep. 209.— Harington & Fombelle.

447. The prisoner was convicted on violent presumption of being an associate in Vazír Ali's conspiracy; but the orders of Government on a former and similar occasion having given him hopes of exemption from punishment, and the evidence shewing some extenuating circumstances in his favour, orders were issued for his release. *Government* v. *Waris Ali.* 15th Feb. 1812. 1 N. A. Rep. 227.—Fombelle.

448. The prisoner was convicted of cutting off his wife's hand; but no punishment was awarded, in consequence of the prayer of the injured party that her husband should be pardoned. *Government* v. *Nunnah.* 30th Sept. 1817. 1 N. A. Rep. 344. —Harington & Rees.

449. Two females were convicted, with their husbands, of receiving stolen property; but from the influence known to be exercised by husbands over their wives, the Court did not think fit to award any punishment. A third female, aged seventy years, was convicted of the same offence, and released in consideration of her age and infirmities. *Government* v. *Perkash and others.* 11th March 1818. 1 N. A. Rep. 353.—Fendall & Rees.

450. Though the injured party pardon the offender, the Muhammadan law recognizes the right of the ruling power to punish him for the ends of public justice. *Mt. Sebha* v. *Moyunoolla.* 19th Sept. 1818. 1 N. A. Rep. 367.—Harington & Fendall.

451. Ruled, that in cases of clear conviction, when, from considerations of policy or other reasons, it may be expedient not to punish the offenders, sentence should be passed, and the question of pardon referred for the orders of Government. *Government* v. *Chynlo and others.* 14th Oct. 1836. 5 N. A. Rep. 31.—Robertson, Money, & C. Smyth.

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54. *Perjury.*

452. A prisoner was acquitted of perjury in having denied on oath that he wrote a bond, alleged to be in his writing; apparent similarity of handwriting, though sufficient, with other circumstances, to establish presumption, not amounting alone to legal proof. *Government* v. *Chukkun Lal.* 26th Aug. 1806. 1 N. A. Rep. 113. —H. Colebrooke & Fombelle.

453. On a charge of perjury, in a deposition on oath, the prisoner was convicted; but he having been wrongly made to give evidence on a criminal charge, in which he was himself implicated, no punishment was awarded for the perjury. *Government* v. *Goordial Sing.* 5th March 1807. 1 N. A. Rep. 138.—Harington & Fombelle.

454. The prisoner having given false evidence, pleaded that he was not upon oath; for though the oath was regularly administered, the sacred symbols were not in his hand when he gave the false evidence. The Pandit referred to on this point declared the plea to be unavailing. Sentence, imprisonment for one year.

Government v. *Ghunpnt.* 8th Dec. 1807. 1 N. A. Rep. 159.—H. Colebrooke & Fombelle.

455. Swearing to the truth of the contents of a petition presented to the magistrate, stating that a bullock belonging to the petitioner was unjustly detained by another, whereas, in fact, the bullock did not belong to the petitioner, but to his relation and fellow lodger, on whose account he wished to recover it, was not considered to merit the punishment of wilful perjury, as no malicious or fraudulent intent appeared. Sentence, discharged. *Government* v. *Subsook and others.* 31st Jan. 1811. 1 N. A. Rep. 222. —H. Colebrooke & Fombelle.

456. A charge of corruption made before a Magistrate not having been established, the magistrate is authorized to commit the accuser to take his trial for perjury at the instance of the party accused, should he find sufficient grounds for so doing; and the commitment is not illegal, though made pending an appeal from the Magistrate, preferred by the original accuser, to the Court of Circuit. With a view, however, to avoid conflicting decisions, it was considered advisable to postpone the trial for perjury until the appealed case was disposed of; the question of the prisoner's being innocent or guilty of the alleged perjury resting on the truth or falsehood of the original charge. Sentence, discharged. *Bijnauth* v. *Hingoo Laul and another.* 16th May 1813. 1 N. A. Rep. 263.—Fombelle, Stuart, & Rees.

457. A private agent falsifying his accounts and embezzling the property of his employer was held to be guilty of breach of trust only, and liable to a civil suit, rather than a criminal prosecution. A false oath taken to the truth of such accounts was held not to be within the legal definition of wilful perjury contained in Reg. II. of 1807. Sentence, released. *Government* v. *Gholaum Hyder.* 10th Dec. 1813. 1 N. A. Rep. 274. — Harington & Fombelle.

458. To constitute the offence of perjury, punishable by the Regulations, in the case of a witness giving different depositions before the Magistrate and Court of Circuit, it is requisite that one of the two contradictory statements be satisfactorily established. *Bhola Pandeh* v. *Sumbhoo Rajpoot and others.* 16th Aug. 1814. 1 N. A. Rep. 282. — H. Colebrooke & Fombelle.

459. Where a false charge, deposed to on oath, is retracted before the party accused has suffered any injury from the accusation, the false accuser is not subjected, by the Muhammadan law, to the penalty of perjury, but is liable to discretionary punishment. The Court considering the imprisonment already undergone a sufficient punishment, directed the release of the prisoners. *Government* v. *Puhlwan and others.* 24th Dec. 1813. 1 N. A. Rep. 288.—H. Colebrooke & Fombelle.

460. A prisoner, though acquitted of subornation of perjury, was dismissed from his office of pleader, in consequence of the suspicion against him for having produced a document in favour of his client. *Government* v. *Wahid Khan and others.* 19th March 1814. 1 N. A. Rep. 293.— H. Colebrooke & Fombelle.

461. It is not regular to convict of perjury on mere confession of having been instigated to swear falsely, when the truth or falsehood of the facts sworn to may be doubtful. Sentence, released. *Government* v. *Mt. Kukha.* 27th Sept. 1815. 1 N. A. Rep. 314. —Fombelle & Ker.

462. A false deposition on oath, taken before a *Muharrir* of the Civil Court, who had not been duly authorized to examine the deponent on oath, was held not to amount to perjury, as defined by Reg. II. of 1807. *Government* v. *Bholaye.* 26th Sept. 1816. 1 N. A. Rep. 326. — Ker & Oswald.

463. The prisoner having been examined on oath, on a criminal charge in which she was deeply implicated,

no punishment was adjudged for her perjury. *Government* v. *Mt. Mookteh.* 12th Feb. 1818. 1 N. A. Rep. 349.—Fendall & Rees.

464. A false deposition on oath, made before the *Muharrir* of a police *Thanna*, the *Dáróghah* being present at the *Thanna*, was held not to come within the legal definition of perjury, the *Muharrir* having no authority to administer an oath while the *Dáróghah* was present, and the latter having no power to delegate it to another. *Government* v. *Gunesh.* 27th May 1819. 1 N. A. Rep. 386. —Fendall & Goad.

465. The prisoner was acquitted of the charge of perjury in giving a false schedule of his property, for the purpose of being admitted to sue as a pauper. *Government* v. *Byjnath Singh.* 28th Feb. 1821. 2 N. A. Rep. 64.—Leycester.

466. A false deposition on oath, taken by the *Amilah* of a Magistrate, not in the presence of the Magistrate or his assistant, was held not punishable as perjury under the Regulations. Sentence, released. *Government* v. *Bhola Ghazee.* 30th March 1822. 2 N. A. Rep. 154. — Goad & J. Shakespear.

467. The confession of a prisoner that he swore falsely is sufficient evidence for conviction of perjury, provided circumstances indicate the falsehood of the deposition charged to be false. Sentence, imprisonment for six months. *Government* v *Khooman.* 6th May 1822. 2 N. A. Rep. 168. —Goad & Dorin.

468. A deposition wrongly taken on oath by a Magistrate, was not allowed, as such, to affect the prisoner, who was charged with having committed perjury therein. Sentence, released. *Government* v. *Gungabishen.* 10th June 1822. 2 N. A. Rep. 180. — C. Smith & Dorin.

469. False evidence taken before the *Sirishtahdár* of a Civil Court, on oath administered by that officer, is punishable as the crime of perjury, supposing it be material to the issue. Sentence, imprisonment for three years. *Government* v. *Moohummud Ewuz.* 12th Sept. 1822. 2 N. A. Rep. 202.—Leycester & Goad.

470. The prisoner personated another, and swore falsely that he was present at an affray, it appearing that his sole motive for doing so was to oblige the person whom he personated. Sentence, imprisonment for three months. *Government* v. *Mahomed Alee.* 17th Sept. 1822. 2 N. A. Rep. 204.—Leycester.

471. The prisoner having admitted before the *Maulaví* that he had perjured himself in the Court of the Register, was sent by the *Maulaví* to the Magistrate, and committed by the latter officer to stand his trial for perjury. Held, that this proceeding was irregular, and that the commitment should have been made at the instance of the Court in which the perjury was committed. The proceedings of the Circuit Court were annulled, and the prisoner held to bail to answer the charge, if brought against him, on any report which the Register might make to the Judge, in conformity with Cl. 2. of Sec. 14. of Reg. XVII. of 1817. *Government* v. *Ramjee Rai.* 3d Oct. 1822. 2 N. A. Rep. 208.—Goad & Dorin.

472. The prisoner, aged seventy years, was convicted of swearing falsely to screen his son, who was charged with an offence, and sentenced, under all the circumstances of the case, to imprisonment for three months, without labour. *Government* v. *Soomut Rajpoot.* 16th Jan. 1824. 2 N. A. Rep. 313.—C. Smith & J. Shakespear.

473. The prisoner being charged with perjury, in falsely swearing that he had no intercourse with a certain *Dáróghah* (suspected of levying contribution), was released; the false swearing not amounting to perjury as defined in Cl. 1. of Sec. 4. of Reg. II. of 1807. *Government* v. *Gholam Rai.* 26th Jan. 1824. 2 N. A. Rep. 314.—C. Smith & Shakespear.

474. On conviction of swearing falsely to the identity of two persons,

whom the Magistrate by way of device placed among the defendants, the Court, under the circumstances of the case, did not deem it advisable to award any punishment. *Government* v. *Ajaib and another.* 31st March 1824. 2 N. A. Rep. 321.—C. Smith & Ahmuty.

475. Held, that a debtor producing a witness, who deposed falsely to his having witnessed a payment to his creditor, forms sufficient presumptive evidence against the debtor to convict him of subornation of perjury. No. 1 convicted of perjury, and No. 2 of subornation of perjury. Sentence, imprisonment for three years. *Government* v. *Jumal Ali and another.* 3d Feb. 1825. 2 N. A. Rep. 361.—C. Smith & Sealy.

476. The prisoner having produced a person in a Court of Justice to give evidence under a fictitious name, was convicted of subornation of perjury, though the perjury was not completed. Sentence, imprisonment for two years. *Government* v. *Ramsoondur Bhagul.* 21st Feb. 1825. 2 N. A. Rep. 363.—Sealy & Martin.

477. In a trial for perjury, it being certified by the Magistrate that the false deposition was taken on oath, and the prisoner not having denied being sworn, the Nizamut Adawlut did not deem the omission to bring witnesses to that fact to be material, though it would have been more regular. Sentence, imprisonment for one year. *Government* v. *Mt. Surmunee.* 23d April 1827. 3 N. A. Rep. 22.—Leycester & Dorin.

478. The prisoner was convicted of perjury in falsely charging certain persons with murder. The prisoner had been charged in another case with murder; and the Judge of Circuit acquitting him of that charge, referred the trial, as he deemed him guilty of a conspiracy to charge falsely on others the very murder for which he was indicted. Sentenced to *Tashhir* and imprisonment in banishment for seven years. *Government and another* v. *Gurhooa and others.* 9th July 1827. 3 N. A. Rep. 50.—C. Smith & Sealy.

479. In a case of perjury by a *Barkandáz* of a *Thanna,* it being presumable that he was influenced by dread of his official superior, a mitigated sentence was passed of imprisonment for eighteen months. *Government* v. *Deen Moohummud.* 6th Aug. 1827. 3 N. A. Rep. 70.—C. Smith.

480. In an indictment for conspiracy to defame, by preferring a false charge on oath, of which offence the Circuit law officer declared the prisoners convicted, the Circuit Judge held them to be convicted of perjury and conspiracy. As, however, they were not distinctly put upon their trial for those offences, the conviction was held to be erroneous. The trial was set aside on the ground that the oath was administered by a Military Court of Inquiry, a tribunal not lawfully empowered to administer the same; and that the party against whom the conspiracy was formed should have appeared as prosecutor. *Government* v. *Mungoo Kahar and others.* 19th Aug. 1828. 3 N. A. Rep. 171.—Leycester & Rattray.

481. A prisoner was proved to have made a false deposition on oath in a civil suit, but acquitted of perjury, as it appeared that the *Sirishtahdár* had taken his evidence on oath without due authority. *Government* v. *Bhowanee Deen and another.* 13th Feb. 1829. 3 N. A. Rep. 212.—Leycester & Turnbull.

482. The prisoners swore to a signature as that of an individual, who it appeared had only signed one letter of the name, and not the whole name. Such deposition was held to be only a lax statement, and not deliberate falsehood; and the prisoners were acquitted of perjury, and released. *Government* v. *Nountee Mohapater and another.* 14th March 1829. 3 N. A. Rep. 217.—Leycester.

483. The prisoner was charged with perjury, and convicted of embezzlement, and sentenced by the Cir-

cuit Judge to five years' imprisonment. The proceeding was held by the Nizamut Adawlut to be irregular, and the sentence annulled. *Government* v. *Nunnoo Tirandaz.* 19th May 1829. 3 N. A. Rep. 234.—Leycester & Rattray.

484. A prisoner was convicted of perjury, in having denied on oath his attestation of a *Thanna* confession; whereas, by his own admission on trial, he was present, and signed the confession. A justificatory plea of perplexity of mind was set aside by the Court. *Government* v. *Kander Durjee.* 18th June 1829. 3 N. A. Rep. 238.—Leycester & Turnbull.

485. The prisoner having been a minor at the time the perjury was committed in his favour, and not appearing to have been personally concerned in the subornation, though present at the time and profiting by it, was acquitted and released. *Government* v. *Ramdyal.* 9th Oct. 1829. 3 N. A. Rep. 280.—Rattray & Turnbull.

486. The commitment, by a Magistrate, for perjury committed before the Civil Judge was held to vitiate the trial, as the Judge only is competent, under Sec. 14. of Reg. XVII. of 1807, to commit in such cases. The prisoner was acquitted and released. *Government* v. *Neamut Oollah and another.* 20th Nov. 1829. 3 N. A. Rep. 290—Leycester & Turnbull.

487. In the case of two prisoners put on their trial, respectively for perjury and subornation of perjury, the former of whom was described in his original deposition, on which the charge was founded, as about thirty years of age, but who appeared on his trial to be between fifty and sixty, the Court held that this discrepancy was sufficient ground for doubting his identity, and accordingly acquitted both prisoners. *Government* v. *Mookhtaram Janna and another.* 4th Oct. 1830. 3 N. A. Rep. 347.—Rattray & Sealy.

488. The prisoner was charged with perjury, in having denied on oath the execution of a certain *Vakálatnámeh,* which he was proved to have executed. Held, that the offence did not come within the definition of perjury, as laid down in Reg. II. of 1807, and the prisoner was acquitted accordingly. *Government* v. *Anund Chunder Nundee.* 27th Jan. 1831. 4 N. A. Rep. 7.—Sealy & H. Shakespear.

489. The prisoners having in a trial for robbery deposed falsely on oath regarding their relationship to each other, the Court held that the point they had deposed to not being material to the issue of the trial, their offence did not amount to perjury, as defined in Sec. 4. of Reg. II. of 1807, and accordingly acquitted them. *Government* v. *Degumbur Gowallah and others.* 4th Feb. 1831. 4 N. A. Rep. 10.—Rattray & Leycester.

490. A prisoner was convicted of perjury, in having come forward in the place of his brother, who had been summoned to give evidence in a criminal trial, and, declaring himself to be the person summoned, having given his deposition under a false name. The Court held that he was properly tried and convicted, without reference to the truth or falsehood of the deposition then made. Sentence, imprisonment for one year. *Government* v. *Bukhory.* 18th Oct. 1833. 4 N. A. Rep. 260.—Rattray & H. Shakespear.

491. The prisoner swore falsely in the Magistrate's Court to the degree of relationship in which he stood to a third party, with the view of inducing the Court to give readier credit to the substantial part of his evidence, which was given under the solemn affirmation prescribed by Act V. of 1840, and he was convicted of perjury. *Government* v. *Mahomed Tuckee.* 30th Sept. 1830. 5 N. A. Rep. 175.—Lee Warner.

492. A prisoner was convicted of the wilful concealment of bond debts, when examined on oath as to his property on his petition to be released under the provisions of Sec. 11. of

Reg. II. of 1806, as an insolvent; and this having been ruled to amount to perjury, he was sentenced to imprisonment for three years. *Government* v. *Hoorail Ram.* 5th June 1837. 5 N. A. Rep. 62.—Reid.

493. Held, that a person producing in Court a false witness through a *Vakíl*, though himself absent, is guilty of subornation of perjury. *Government* v. *Muteeool Rahman and others.* 8th July 1837. 5 N. A. Rep. 67.—C. Smith.

494. A false deposition taken before a Magistrate's *Muharrir*, retracted before a Magistrate, and not duly attested either by that officer or his assistant, is insufficient ground for a charge of perjury. Sentence, released. *Government* v. *Juldhur Moodlee.* 18th Aug. 1837. 5 N. A. Rep. 70.—Hutchinson.

495. A prisoner charged with perjury, in deposing falsely on oath, with a view to induce readier credit to his evidence, was convicted of swearing falsely, though the false statement was not directly material to the point at issue. Sentence, imprisonment for six months. *Government* v. *Ram Hujam.* 13th Nov. 1838. 5 N. A. Rep. 110.—Reid.

496. In a case of perjury, the time, place, and Court in which the alleged perjury was committed having been omitted in the charge, and the deposition containing the alleged perjury, and the authority under which the Deputy Collector tried the case, not having been put upon the record of the trial, the proceedings were quashed, and a new trial ordered. *Government* v. *Zaheer Khan and another.* 28th March 1840. 5 N. A. Rep. 166.—Reid.

55. *Plundering.*

497. The prisoners were convicted of plundering a stranded boat of grain. The Court did not consider the offence to come within the provisions of robbery by open violence, as defined in Cl. 1. of Sec. 3. of Reg. LIII. of 1803. *Bulbhudder* v. *Nubboo Singh and others.* 4th Feb. 1824. 2 N. A. Rep. 315.

56. *Police Officers.*

498. Police officers are prohibited from suffering accusations of theft, &c., to be settled by private adjustment. *Government* v. *Mahomed Sauteh.* 17th Dec. 1808. 1 N. A. Rep. 180.—Harington & Fombelle.

499. Police *Dáróghahs* are strictly prohibited from receiving criminal charges unless on oath. *Government* v. *Mt. Mookteh.* 12th Feb. 1818. 1 N. A. Rep. 349.—Fendall & Rees.

500. Process issued by a *Thannadár* at the requisition of an *Ameen*, who reported that the former *Zamíndárs* were ripe for rebellion, was held to be illegal. *Government* v. *Purtab Singh and others.* 31st Dec. 1822. 2 N. A. Rep. 225.—Leycester & Goad.

501. It is irregular, under the Court's Circular Orders, for police officers to prosecute an inquiry into a case of abortion, though the inquiry originated in the discovery of a murdered infant, the one case having no connection with the other.[1] *Government* v. *Mt. Dhunhoowuree.* 14th Aug. 1826. 2 N. A. Rep. 464.—Leycester & Dorin.

57. *Prosecutor.*

502. On a charge of murder and wounding, the law officer acquitted of the wounding, on the ground of there being no prosecutor. The Court observed, that it would have

[1] By a construction given by the Court, and circulated on the 31st Dec. 1824, it is provided—"In regard of abortion, or procuring it, the Court do not consider the offences to be of a heinous description unless death ensue, and where this is not the case, they are of opinion that such charges partake of the nature of those specified in Cl. 1. of Sec. 12. of Reg. XX. of 1817, and should not, therefore, be investigated by the *Dáróghas* of police, or other police officers, without the special orders of the Magistrate."

been more regular had the Government pleader, in the absence of the wounded persons, been constituted prosecutor. *Kadaree* v. *Ramdial.* 12th March 1823. 2 N. A. Rep. 241.—Leycester & C. Smith.

503. In a case of rape, the only prosecutor appearing to be the ravished girl, who was an infant, the proceedings were returned, with instructions that the Government pleader should become the prosecutor. *Mt. Lutchmuneea* v. *Hurroo Kahar.* 8th Aug. 1828. 3 N. A. Rep. 170.—Rattray & Turnbull.

504. In charges of conspiracy, the party aggrieved must be the prosecutor. *Government* v. *Mungoo Kahar and others.* 19th Aug. 1828. 3 N. A. Rep. 171. — Leycester & Rattray.

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58. *Public Justice.*

505. The Muhammadan law admits the right of the ruling power to punish serious offences for the ends of justice, though the injured party waive his private claim. *Mt. Sebha* v. *Moyunoolla.* 19th Sept. 1818. 1 N. A. Rep. 367. — Harington & Fendall.

505*a*. Under the Muhammadan law, a *Futwa* of death by *Siyásat* cannot be given except for murder; though some authorities recognize, in abstract terms, the right of the ruling power to extirpate evil doers generally. *Sudas Seo* v. *Chundoo Kandoo.* 21st Sept. 1825. 2 N. A. Rep. 418.—C. Smith & Sealy.

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59. *Rape.*

506. Held, that it is not necessary, under Reg. XVII. of 1817, to refer a trial for rape to the Nizamut Adawlut, unless the Judge of Circuit and his law officer be of opinion that the offence was actually consummated. *Mt. Achnoo* v. *Meeran Shah.* 10th June 1822. 2 N. A. Rep. 182. —C. Smith & Dorin.

507. Held, that the provisions contained in Cl. 1. of Sec. 6. of Reg. XVII. of 1817, which requires the law officer to declare only whether the prisoner be legally convicted, is not applicable to a case of rape attended with robbery. Sentence, thirty stripes, and imprisonment in banishment for ten years. *Cashee* v. *Poorye Lode.* 10th May 1823. 2 N. A. Rep. 267.—C. Smith & Dorin.

508. The prisoner having been acquitted by a Judge of Circuit, on unsatisfactory grounds, of the charge of rape, the Nizamut Adawlut, on revision, did not touch the acquittal, but recorded their disapprobation of the sentence. *Mt. Bunan* v. *Sheikh Meerun.* 24th Nov. 1823. 2 N. A. Rep. 292. — C. Smith & J. Shakespear.

509. A prisoner was acquitted of the charge of rape, but convicted of the minor offence of adultery, and punished for the same as an offence *contra bonos mores.*[1] Sentence, imprisonment for one year. *Mt. Jooee* v. *Bungsee Baooree.* 10th Feb. 1842. 2 N. A. Rep. 317.—C. Smith & J. Shakespear.

510. The only evidence against the prisoner, charged with rape, being that of the girl alleged to have been ravished, who was too young to be sworn, the Court directed the release of the prisoner. *Government* v. *Leela Gwalla.* 9th Nov. 1825. 2 N. A. Rep. 415.—C. Smith & H. Shakespear.

511. The prisoner, a youth, was convicted of carnally knowing a girl aged eight years, at which age her consent was deemed immaterial. Sentence, fifteen stripes, and imprisonment for six months. *Mirooa* v. *Lullooa.* 19th April 1826. 2 N. A. Rep. 452.—C. Smith & Sealy.

512. In a case of rape, the girl violated being deaf and dumb, and it not being possible to administer an oath to her, the prisoner, though indicated by her as being the person who ravished her, was acquitted for want of evidence. *Sheo Lal* v. *Rai*

[1] But see Pl 518, 519

Singh. 19th July 1827. 3 N. A. Rep. 59.—C. Smith & Dorin.

513. A boy, only ten years old, being convicted by the *Futwa* of rape on a girl only three years old, the Nizamut Adawlut viewed it as an attempt only, and punished it, as a misdemeanour, with one year's imprisonment. *Kureem Noorbaf* v. *Meeun Noorbaf.* 14th Nov. 1827. 3 N. A. Rep. 87.—Leycester & Dorin.

514. A prisoner was convicted of rape and sentenced to imprisonment for seven years, though a *Rázínámeh* was filed by the injured party in consequence of the prisoner's promising to marry her. The Court deemed a *Rázínámeh* inadmissible in so heinous an offence. *Government* v. *Fakeerchand Chung.* 21st April 1828. 2 N. A. Rep. 127.—Sealy & Turnbull.

515. In a trial for rape, there being nothing to prove the identity of the prisoners but the statements of four children examined without oath, the Nizamut Adawlut returned the proceedings, with directions that such of them as evinced a sense of the obligation of deposing truly should be sworn to the truth of their depositions. *Khedoo Noorbaf* v. *Gocool Gwala and another.* 30th Sept. 1828. 3 N. A. Rep. 194.—Sealy & Turnbull.

516. Held, that the completion of the crime of rape, according to the definition of English law, is not necessary to consequent punishment. *Mukhroo* v. *Judoo.* 17th Feb. 1829. 3 N. A. Rep. 215. — Leycester & Turnbull.

517. The prisoners were originally tried for highway robbery, and acquitted; but though no charge of rape was preferred against them by the prosecutrix on that occasion, four of them acknowledged themselves, and implicated a fifth prisoner, as concerned either as principals or accessaries in a rape on her person. On these confessions they were all indicted; but, no other evidence appearing against them, were acquitted. *Government* v. *Ramkishen Sing and others.* 12th April 1830. 3 N. A. Rep. 325.—Leycester & Turnbull.

518. A prisoner was acquitted and released of the charge of rape, on the ground that the evidence, even if deserving of credit, only substantiated the fact of adultery. *Deendyal* v. *Bhyrub Chunder Tellee.* 9th May 1831. 4 N. A. Rep. 35.—Ross & Rattray.

519. Held, that in a trial for rape the prisoner cannot be convicted of adultery. *Government* v. *Sirdar Shookl.* 16th Aug. 1839. 5 N. A. Rep. 140.—Rattray & Reid.

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60. *Rebellion.*

520. One hundred and eighty-four prisoners were charged with rebellion, attended with murder and wounding, and attacking the joint Magistrate of Baraset. The *Futwa* of the law officer of the Nizamut Adawlut barred punishment upon a doctrine laid down in the Chapter on Rebellion in the Hedaya[1] (force having been employed to put them down, and their leader having been slain), and declared them all entitled to their release. The Court convicted one of having headed the insurgent force, he having been conspicuously and actively engaged in the attack and massacre of the joint Magistrate's party, and sentenced him capitally; thirteen, convicted of the principal charge, were sentenced, eleven to imprisonment for life, and two, in consequence of their youth, for seven years; one hundred and nine, convicted of a minor part, were sentenced, eighteen ringleaders to imprisonment for five years, forty for four years, thirty for three years, ten for two years, three were discharged without punishment in consequence of loss of limbs from wounds, fifty-seven were acquitted and released, three died before trial, and one found to be insane. *Government* v. *Ramzaun and others.* 29th Dec. 1832. 4 N. A. Rep. 198.—Walpole & Rattray.

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[1] 2 Hed. 247.

61. *Receiving Stolen or Plundered Property.*

521. A prisoner was acquitted of the charge of knowingly possessing property obtained by *Dacoity* perpetrated in the Company's territory; the finding of part of the plundered property in the prisoner's house, out of the British jurisdiction, not being sufficient proof of receipt within the British territory. *Mt. Hureea* v. *Jumai and others.* 22d May 1821. 2 N. A. Rep. 80.—Dorin & C. Smith.

522. To warrant a conviction for receiving stolen property, it is not necessary to prove that the person robbed had possession of the property up to the date of his death. *Munnooa* v. *Sheoghoolam.* 13th Jan. 1826. 2 N. A. Rep. 425.—C. Smith & Ross.

523. A prisoner was convicted of receiving stolen property, which was found in his house within the limits of the jurisdiction of the Supreme Court. The Nizamut Adawlut held that the case was not cognizable by the Calcutta Court of Circuit. Sentence, discharged. *Mt. Banoo* v. *Asghur Khansaman.* 16th July 1828. 3 N. A. Rep. 163. — Leycester & Rattray.

524. Held, that embezzled property, recovered on conviction of a prisoner, should be restored to the person from whom it was embezzled. *Mohun Lall and another* v. *Mt. Lutchminya and others.* 21st March 1835. 5 N. A. Rep. 1.—Braddon.

525. The Session Judge being competent to pass a final sentence upon a prisoner convicted of receiving plundered property, knowing it to have been obtained in the course of robbery by open violence attended with murder, the Court directed the proceedings to be returned to him. *Anoolah Peramanick* v. *Biddoo.* 4th Dec. 1840. 5 N. A. Rep. 179. —D. C. Smyth.

62. *Regulations.*

526. The period for attendance under a proclamation, as prescribed by Reg. IX. of 1808[1], is to be reckoned from the day on which it is promulgated, not from the day on which it is dated. *Government* v. *Shewa Budhek.* 6th Aug. 1811. 1 N. A. Rep. 224.—Fombelle & Stuart.

527. In a case of supervenient insanity after the commission of murder by the prisoner while sane, the Court did not think fit to apply the rule contained in Reg. IV. of 1822, the offence having been committed long prior to that enactment. *Suroopchund Agurdanee* v. *Oodit Agurdanee.* 31st July 1822. 2 N. A. Rep. 189.—Leycester & Dorin.

528. The Court did not think fit to apply the provisions of a Regulation to an offence committed subsequent to the date of its being in force, but prior to the probable date of its receipt at the place where the offence was committed. *Government* v. *Bunwaree.* 9th Jan. 1823. 2 N. A. Rep. 233.—Dorin & C. Smith.

529. Held, by a majority of the Court of Nizamut Adawlut, that the proclamation prescribed in Reg. IX. of 1808[2] does not apply to a case of robbery and murder, originating in a private feud, where plunder was not the primary object of the offenders. *Government* v. *Purtab and others.* 12th April 1823. 2 N. A. Rep. 248. —Leycester, Dorin, & Martin.

530. Held, that a capital sentence may be passed under Reg. IV. of 1822, notwithstanding a *Futwa* of *Diyat.* *Bukhsh* v. *Babooa Nutt.* 30th April 1823. 2 N. A. Rep. 257. —C. Smith & Martin.

531. Held, that the provisions contained in Cl. 1. of Sec. 6. of Reg. XVII. of 1817 (which requires the law officer to declare only whether the prisoner be legally convicted) are not applicable to a case of rape attended with robbery. *Cashee* v. *Poorye Lode.* 10th May 1823. 2 N. A. Rep. 267.—C. Smith & Dorin.

532. The *Futwa* of the law officer

[1] Repealed by Act IV. of 1844.
[2] See the preceding note.

of a Court of Circuit having declared certain prisoners (convicts imprisoned for life), tried for assault and wounding, liable to *Tazir* as well as *Hukúmat-i-udl;* held, that Sec. 6. of Reg. IV. of 1822 does not preclude the Judge of Circuit from awarding corporal punishment under Cl. 7. of Sec. 2. of Reg. LIII. of 1803. *Anund Chunder Chatoorjea* v. *Deen Ali Shah and others.* 21st Feb. 1825. 2 N. A. Rep. 362.—C. Smith & Sealy.

533. According to the intent and spirit of Sec. 6. of Reg. XVII. of 1817, it is equally requisite, that, on charges of adultery, the husband should appear as the prosecutor, whether the person prosecuted be the adulterer or adulteress. *Government* v. *Panchoo and others.* 27th Sept. 1825. 2 N. A. Rep. 421.—C. Smith & H. Shakespear.

534. Held, that the provisions of Reg. XVI. of 1825 do not alter those of Reg. XV. of 1814, by which the Court of Circuit is competent to reduce the punishment of prisoners, convicted of two offences, to fourteen years' imprisonment. *Mt. Jye Doorga* v. *Kulloo and others.* 17th June 1826. 2 N. A. Rep. 459.—Leycester & C. Smith.

535. Held, that the provisions of Sec. 11. of Reg. XVII. of 1817 are not applicable to a carrier of counterfeit rupees for the use of another, it being presumed that he was ignorant of their nature. *Government* v. *Chopa Aheer.* 16th July 1827. 3 N. A. Rep. 58.—Leycester & Dorin.

536. Held, that the rules contained in Sec. 7. of Reg. XII. of 1825, which declare inadequacy of the prescribed sentence not to be a legitimate ground of reference, are applicable to the case of a prisoner whose offence was committed prior to the promulgation of that enactment. *Government* v. *Khooshee Raí.* 7th March 1828. 3 N. A. Rep. 107.—Leycester & Sealy.

537. Held, that a fraud on the post office, by means of procuring a frank on a false pretence, is punishable by pecuniary fine, commutable to imprisonment, under the provisions of Cl. 7. of Sec. 2. of Reg. LIII. of 1803. *Government* v. *Anund Chunder Bunhoojea.* 22d April 1828. 3 N. A. Rep. 130.—Leycester & Turnbull.

538. Held, in a case of robbery and administering noxious drugs, that the robbery being considered as accompanied with attempt to murder by poison, the Commissioner was not competent to pass any other sentence than that prescribed by Cl. 4. of Sec. 8. of Reg. XVII. of 1817, viz. imprisonment in transportation for life. *Government* v. *Kishen Singh.* 17th May 1830. 3 N. A. Rep. 333.—Ross & Rattray.

539. If a true account of the receipts and of the proceeds of the sale of paper entrusted to him be rendered by a vendor of stamps, only the penalty prescribed in Cl. 3. of Sec. 10. of Reg. X. of 1829 is exigible for the non-delivery of paper or money due according to the account; but if the account rendered be false, the vendor is liable, under the general Regulations, to a prosecution in the Criminal Court for fraud and embezzlement. *Government* v. *Sheonath Dutt and others.* 3d Aug. 1831. 4 N. A. Rep. 67.—Court at large.

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63. *Resistance of Process.*

540. The prisoners were convicted of murder in assaulting and opposing a military party employed on the public service; and sentenced, the leader to suffer death, and the others, as accomplices, to imprisonment in transportation for life. *Government* v. *Puhlwan Rai and others.* 10th Sept. 1805. 1 N. A. Rep. 56.—H. Colebrooke & Harington.

541. Resistance offered by a farmer and others to persons legally authorized to distrain his effects, was held to be a criminal act, and punishable by imprisonment, notwithstanding that the distress may have been levied in an irregular manner; the farmer always having it in his power to gain redress sub-

sequently by application to a Court of Justice. Sentence, No. 1, imprisonment for one year, and the other prisoners for six months. *Huree Pershaud Mujmooadar and others* v. *Kifayut Mundul and others*. 4th Oct. 1814. 1 N. A. Rep. 302.—Fombelle & Rees.

542. Process issued by a *Thannadár* at the requisition of an *Ameen*, who reported to him that the former *Zamíndárs* were ripe for rebellion, was held to be illegal. *Government* v. *Purtab Singh and others*. 31st Dec. 1822. 2 N. A. Rep. 225.—Leycester & Goad.

543. Resistance of process is not a fit subject for commitment to the Court of Circuit, but should be proceeded against according to Sec. 2. of Reg. III. of 1804. *Ib.*

544. No. 1, a *Havildár*, and Nos. 2 and 3, sepoys of the Burdwan Provincial Battalion, were charged with rescuing from the custody of the police and Magistrate's officers two persons belonging to the Santipore Commercial Factory, and acquitted: the *Havildár*, because he acted under instructions from a person whom he deemed himself bound to obey; and the sepoys, because they acted in obedience to the orders of the *Havildár*, their immediate superior. *Government* v. *Pursun Singh and others*. 30th June 1824. 2 N. A. Rep. 330. —C. Smith & Ahmuty.

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64. *Respite.*

545. A sentence of death having been passed on two prisoners, the sister of one of them presented a petition, stating that the person for whose murder her brother was about to suffer was then alive. The execution was respited, but afterwards enforced on the petitioner's admitting the falsehood of her assertion. *Srimutee* v. *Surqop Malahar*. 12th Feb. 1812. 1 N. A. Rep 226.—H Colebrooke & Fombelle.

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65. *Sati.*

546. The prisoners were charged with assisting at an illegal *Sati*, but acquitted; there being no irregularity in the *Sati*, except the omission to give timely notice to the police, which, however, was not an offence punishable by the Regulations then in force. *Government* v. *Mungul Rai and others*. 5th June 1822. 2 N. A. Rep. 179.—Leycester.

547. The Pandits having declared that the doctrine that a woman of the Brahminical tribe could not perform the ceremony of *Anoomurrun*, was not applicable to the case of a woman impressed with the belief of her husband's death, but of which no certain intelligence had been received; this doctrine was overruled by the Court. *Government* v. *Ramdul and another*. 20th June 1823. 2 N. A. Rep. 274. —C. Smith, Dorin, & Martin.

548. In a trial for aiding in an illegal *Sati*, the charge should specifically state the illegality in the procedure, and the conviction rest on proof of such illegality. The proceedings in this case, being defective in this respect, were returned to have the omission supplied. *Government* v. *Hurdial Singh*. 30th April 1829. 3 N. A. Rep. 229. — Leycester & Turnbull.

549. The prisoners were convicted of culpable homicide, in aiding and abetting in the sacrifice of a Hindú widow by burning, in contravention of the rules laid down in Reg. XVII. of 1829. Sentence, Nos. 1 and 2, the relations of the widow, to imprisonment for one year, and No. 3. for six months. *Government* v. *Jankey Chowbey and others*. 23d June 1834. 4 N. A. Rep. 308.—Rattray.

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66. *Sentence.*

550. The prisoner was convicted of theft, and sentenced by the Court of Circuit to *Tashhír*, or ignominious exposure. The Nizamut Adawlut held that such punishment should not be adjudged, except in cases expressly authorized by the Regulations. *Rujeem Bukhsh* v. *Nur Moohummud*.

26th March 1811. 1 N. A. Rep. 223.—Harington & Fombelle.

551. In cases where a stated penalty is prescribed for an offence, as well by the Regulations as by the Muhammadan law, the provisions of the latter are superseded. *Fyzoolah* v. *Deo Rai and another.* 19th May 1813. 1 N. A. Rep. 262. — Fombelle & Rees.

552. Capital punishment, in cases of murder, is not barred by the promise of the prosecutor not to prosecute if the prisoner would restore the ornaments stolen from the deceased. *Bostum* v. *Kuntheeram.* 27th Aug. 1821. 2 N. A. Rep. 96.—Leycester. *Peearay* v. *Nunheh.* 2d Aug. 1827. 3 N. A. Rep. 69.—C. Smith & Dorin.

553. In a case of child stealing, it is competent to a Judge of Circuit to pass a definite sentence of four years' imprisonment; and a conditional term of three or more in addition, should the child not be forthcoming; the whole period not exceeding seven years. *Government* v. *Dursun.* 31st Jan. 1826. 2 N. A. Rep. 447.—C. Smith & Dorin.

554. Capital punishment, in case of murder, is not barred by absence of proof of the identity of a body which the prisoner pointed out as that of the person whom he confessed he had murdered. *Paim* v. *Jeorakhun.* 31st Oct. 1821. 2 N. A. Rep. 104.—Goad & J. Shakespear.

555. In sentences of the Nizamut Adawlut not specifying labour in irons, exemption from that punishment is intended. *Roopun Rai* v. *Juglall and others.* 6th July 1827. 3 N. A. Rep. 49.—Court at large.

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67. *Shooting.*

556. A sepoy was convicted of culpable homicide in shooting at a mob and killing a man, in a quarrel occasioned by an attempt of the prisoner and another sepoy to press a villager for carrying their baggage. Sentence, imprisonment for three years. *Gholam Ghos* v. *Ramjeewun and another.* 22d May 1810. 1 N. A. Rep. 209. —H. Colebrooke & Fombelle.

557. The prisoner accidentally shooting a man while firing at a hog, was acquitted, in opposition to the *Futwa,* which declared him liable to *Diyat. Government* v. *Rozario.* 11th Jan. 1831. 4 N. A. Rep. 1.—Rattray & Sealy.

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68. *Sodomy.*

558. In the Muhammadan law, according to the doctrines of *Abú Yúsuf* and *Imám Muhammad,* the crime of sodomy is classed with that of whoredom, and is punishable in the same manner. *Gobind Bhutt* v. *Bheekum Bhutt.* 24th June 1812. 1 N. A. Rep. 234. — Harington & Stuart.

559. To warrant the infliction of *Hadd,* or the specific penalty of whoredom, on account of the offence, it is requisite that the crime be established in conformity with the rules of evidence prescribed in cases of *Hadd.* When not so established, the offender, if presumed guilty, is liable to discretionary punishment. *Ib.*

560. Held, that as *Tashhír* generally forms part of the punishment on conviction of this offence, the case should always be referred to the Nizamut Adawlut. Sentence, thirty stripes, *Tashhír,* and imprisonment for eight years each. *Government* v. *Pimmee and others.* 30th Oct. 1820. 2 N. A. Rep. 49.—Leycester.

561. Held, that the Judge of Circuit, concurring with his law officer in convicting the prisoner of sodomy, need not refer the trial, unless he be of opinion that *Tashhír* should form part of the sentence. Sentence, twenty-five stripes and imprisonment for ten years. *Government* v. *Soohhooa.* 25th Feb. 1823. 2 N. A. Rep. 238.—C. Smith.

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69. *Stamps, forging.*

562. A prisoner charged with

vending forged stamped paper, and pleading that he had received it to sell on account of another person, which plea he could not substantiate, and implements of forgery being found in his house, the presumption was, that he not only sold the stamped paper, knowing it to be forged, but that he actually committed the forgery. Sentence, *Tashhír*, *Gódná*, and imprisonment for seven years. *Government* v. *Sohan Lal.* 17th Nov. 1813. 1 N. A. Rep. 284.—Rees.

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70. *Suicide, assisting at.*

563. A Musulmán was convicted of burying his mother-in-law, who was leprous, without ascertaining that she was dead. The Court, adverting to all the circumstances of the case, and to the fact of the prisoner having already been in confinement six months, directed that he should be cautioned and released. A proclamation was issued warning the Muhammadans that they would be subject to punishment if guilty of such a practice. *Government* v. *Badul Khan and others.* 7th Aug. 1810. 1 N. A. Rep. 218.—Harington & Fombelle.

564. A Hindú was proved to have prepared a pit and set fire to the fuel in it to enable his father, who was afflicted with leprosy, to burn himself; but being justified under the tenets of the Hindú law, and also acquitted by the Muhammadan law officers, he was acquitted by the Court, and released.[1] *Government* v. *Sohawun.* 7th Aug. 1810. 1 N. A. Rep. 220. —Harington & Fombelle.

565. A Hindú having assisted his father, who was suffering from incurable leprosy, to drown himself, was acquitted and released. *Government* v. *Sheoo Suhaee.* 8th March 1814. 1 N. A. Rep. 292.—H. Colebrooke & Fombelle.

566. The prisoners, Musulmáns, were convicted of aiding in the suicide of a leprous woman, who buried herself with the corpse of her husband, who was also a leper. Sentence, imprisonment for six months. *Government* v. *Fukeera and others.* 4th March 1820. 2 N. A. Rep. 18.—Goad.

567. The prisoners, who were *Fakírs*, were convicted of sitting *Dhurna*, and assisting in the suicide of one of their companions; and sentenced, in consideration of their gross ignorance and other circumstances, to imprisonment for five years. *Government* v. *Khuchury Shah and others.* 19th July 1825. 2 N. A. Rep. 409. —C. Smith & Sealy.

568. The prisoners were convicted of aiding in the suicide of their uncle, who was a leper; but the Court, not deeming it proper to sentence them to any punishment beyond the confinement they had undergone, directed their release. *Government* v. *Teeluh and another.* 12th April 1828. 3 N. A. Rep. 127.—Leycester & Turnbull.

569. The prisoners were convicted of assisting in burning to death the wife of the prisoner No. 1, apparently with her own consent, for the purpose of intimidating and preventing persons deputed to execute a decree of Court from performing that duty. Sentence, No. 1, imprisonment for life, and the other prisoners for seven years. *Government* v. *Cheitram and others.* 8th Jan. 1824. 2 N. A. Rep. 310.—C. Smith & J. Shakespear.

570. The prisoners were charged with aiding and abetting a third person, who died before the conclusion of the trial, in destroying his brother, a leper, by carrying him to the spot; but were acquitted and discharged, it

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[1] The Court ruled, that assisting at suicide or *Satí*, though within the letter of Sec. 3. of Reg VII of 1799, which declares, "it shall not justify any prisoner convicted of culpable homicide, that he or she was desired by the party slain to put him or her to death," neither of those crimes was within the intention of the Section, which was "to preserve the lives of many from the effects of passion or revenge, aided by the enormous prejudices of superstition"

not being proved that they were aware of the intention to destroy the leper. *Government* v. *Gunsham and others.* 30th April 1828. 3 N. A. Rep. 139. —Turnbull & Leycester.

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71. *Theft.*

571. The prisoner having been convicted of theft of money and effects of his master to the value of Rs. 1500, was sentenced, by the Circuit Judge, to thirty-nine stripes, *Tashhír*, and imprisonment for five years. The case having been called for, it appeared that the legal sentence would have been imprisonment for seven years. As, however, the Court presumed the corporal punishment and *Tashhír* to have been already inflicted, they did not deem it necessary to interfere with the sentence passed, but informed the Judge that *Tashhír* should not be inflicted for theft, or in any case not expressly authorized by the Regulations. *Rujeem Bukhsh* v. *Yar Mohummud.* 26th March 1811. 1 N. A. Rep. 223.—Harington & Fombelle.

572. By the Muhammadan law, *Hadd*, or the prescribed punishment for larceny, is not incurred by a slave stealing, or assisting in stealing, the property of his owner. But he is liable to discretionary punishment for breach of trust. *Cullub Ally Mokhtar* v. *Chumelee and another.* 3d July 1812. 1 N. A. Rep. 233. — Burges.

573. Under the Muhammadan law, a *Multahit*, or finder, failing to make public advertisement of a *Luktah*, or trove property, subjects himself to discretionary punishment. *Luktah*, or trove property, is considered as a trust in the hands of the *Multahit*, or finder. *Chundoo* v. *Sheikh Roopun and others.* 15th May 1815. 1 N. A. Rep. 308.—Fombelle & Ker.

574. Under the Muhammadan law, any individual of a gang of thieves, who may be convicted of theft in which murder has been committed, is punishable for the murder by discretionary punishment extending to death, without proof that he was the actual murderer. *Mt. Cheetra* v. *Gour Chung and others.* 10th Aug. 1815. 1 N. A. Rep. 312.—Ker.

575. The clandestine removal by a servant, from his employer's residence, of property placed under his custody by his employer, with the intent of appropriating such property to himself, was held to be theft. *Surroop Chunder Nunder* v. *Sheikh Canoo and others.* 22d Feb. 1840. 5 N. A. Rep. 165.—Lee Warner.

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72. *Thieves, killing or maltreating.*

576. The prisoner, a sentinel, was convicted of the murder of a person who did not answer to a third challenge, according to orders received from his superior. As he appeared to have committed the act under a mistaken sense of duty, the Court recommended him for pardon, which was sanctioned. *Government* v. *Sheikh Peer Ali.* 24th Sept. 1807. 1 N. A. Rep. 158.—Harington & Fombelle.

577. In the Muhammadan law there is no allowance made for a person slaying a robber after he has been taken into safe custody; but such homicide incurs the penalty of wilful murder. *Government* v. *Keheree Kandoo.* 2d Jan. 1813. 1 N. A. Rep. 249. —H. Colebrooke, Fombelle, & Rees.

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73. *Thuggí.*

578. The prisoner, charged with being a *Thug*, was not convicted, as this was not considered a specific charge on which he could be punished. Sentence, released.[1] *Government* v. *Tuhowar Khan.* 21st July 1812. 1 N. A. Rep. 239.—Burges & Rees.

579. The prisoners were acquitted of the *Thuggí* charged, but made over to the Assistant to the General Superintendant of operations for the suppression of *Thuggí*, to be dealt with under Act XXX. of 1836. *Government* v. *Kishore Sein and others.*

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[1] But see Act XXX. of 1836

25th June 1838. 5 N. A. Rep. 89. —The Court at large.

579 *a*. Held, that under the provisions of Act XVII. of 1837 the appointment of a Special Judge for the trial of cases of *Thuggi* does not bar the jurisdiction of the ordinary Sessions Courts in such cases. The Court has, however, by a Circular, directed the ordinary Session Judges to abstain from trying cases committed by the Assistants to the General Superintendant of operations for the suppression of *Thuggi*, leaving them to be disposed of by the Judge especially appointed for that purpose. *Ib.*

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74. *Transportation.*

580. It is not competent to the Nizamut Adawlut (except in the exercise of their general powers of mitigation, where they may deem the object worthy of it) to exempt from transportation an individual convicted of an offence for which the Regulations specifically prescribe that punishment. *Government* v. *Soodes and others.* 12th Jan. 1827. 3 N. A. Rep. 1.—Leycester & Ross.

581. Imprisonment in transportation beyond sea for life, was held to be a more severe sentence than imprisonment for life in the jail at Allipore, and to require two voices in the Nizamut Adawlut when the Session Judge recommends the latter sentence. *Nyne Koeree* v. *Ramdial Bhoonia and others.* 9th Jan. 1838. 5 N. A. Rep. 80.—Reid & Halhed.

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75. *Trial.*

(*a*) *Conduct of, by the Sessions Court.*

582. When further evidence is taken in criminal trials under the orders of the Nizamut Adawlut, the prisoners should be called upon for their defence, after taking such additional evidence, in like manner as on the original trial. *Government* v. *Delas and another.* 17th Aug. 1812. 1 N. A. Rep. 245.—Fombelle.

583. A prisoner being charged in two cases, the first with murder by poison, the second with poisoning unattended with fatal consequences, the Judge of Circuit, considering him convicted of the first offence, thought it unnecessary, under Reg. XV. of 1814, to proceed to the trial of the second. The Court postponed passing sentence in the first, until the second trial should be completed, and submitted by the Judge of Circuit. *Byjeda* v. *Kulwa.* 13th Nov. 1820. 2 N. A. Rep. 51.—Leycester.

584. When a prisoner is charged with two or more distinct offences, the record of each trial should be kept separate, and a *Futwa* taken on each individual case, and not on the whole collectively. *Mt. Peerbuksh and others* v. *Choona.* 31st Dec. 1821. 2 N. A. Rep. 140.—Leycester.

585. The Judge of Circuit having declined to put a prisoner on his defence on account of his youth, the Court ruled that his proceeding was irregular. *Government* v. *Cheitram and others.* 8th Jan. 1824. 2 N. A. Rep. 310.—C. Smith & J. Shakespear.

586. In a case of abduction and subsequent murder of a woman in a foreign territory, it appeared that the Commissioner who tried the prisoner was the officer who conducted the preliminary inquiry as Magistrate, and originally applied to Government for permission to commit him for trial on the above charge, although he did not actually make the commitment. The Nizamut Adawlut were unanimously of opinion, that the proceedings held on the trial were virtually in contravention of the law, and accordingly quashed them, and ordered the prisoner to be tried *de novo* by a competent officer. *Dhonkla* v. *Thakooreea.* 19th June 1830. 3 N A. Rep. 334.—Court at large.

587. In a trial for murder, in which the evidence was defective, it was ruled that it was not competent to the Court to pass a conditional sentence of acquittal, rendering the prisoner

liable to a second trial in the event of further evidence being procurable. *Ramjee Doss* v. *Ramchurn Potedar.* 25th July 1836. 5 N. A. Rep. 25.—Court at large.

588. The prisoner was charged with bribery and corruption on seven different counts, and tried by assessors sitting with the Session Judge. After the plea of the prisoner to five counts had been recorded (two counts having been abandoned), and witnesses examined in support of the first three of them, the Session Judge called in other assessors in lieu of those who first sat with him. On the conclusion of the trial, the verdict on three counts was delivered by the first set of assessors, and on the remaining two counts by those who sat last. Held, that the employment of two different sets of assessors, under the circumstances mentioned, was irregular. *Government* v. *Kishen Chund Roy.* 7th May 1838. 5 N. A. Rep. 87. Hutchinson & Money.

(*b*) *Referrible to the Nizamut Adawlut.*

589. In a case of conviction by the law officer of robbery with attempt to murder, the Judge must refer the trial, whether he concur in or dissent from the *Futwa.* *Government* v. *Umerodh Pande.* 7th May 1823. 2 N. A. Rep. 264.—Court at large.

590. All trials must be referred to the Nizamut Adawlut wherein the Circuit Judge may differ from his law officer on any other grounds than those especially provided for in the Regulations. *Government* v. *Nandee.* 30th April 1829. 3 N. A. Rep. 230. —Leycester & Turnbull.

591. A person having been convicted by the Commissioner, of robbery and administering noxious drugs, and sentenced to thirty-nine rattans and imprisonment for fourteen years, the Court considered the crime proved against the prisoner to amount to robbery, accompanied with an attempt to poison; and that, in such case, the Commissioner was not competent to pass any other sentence than that prescribed by Cl. 4. of Sec. 8. of Reg. XVII. of 1817, *i.e.* imprisonment in transportation for life. They therefore annulled his sentence, but, deeming the punishment awarded sufficient, passed a sentence to that effect on the prisoner. *Government* v. *Kishen Singh.* 17th May 1830. 3 N. A. Rep. 333.—Ross & Rattray.

592. In a case of murder, the *Futwa* of the Commissioner's Court acquitted the prisoners of the murder, but found them guilty of having attacked the house of a missing person, and seized and carried off and beaten him till he became insensible, and had not since been heard of. The Commissioner, in concurrence with his *Futwa,* sentenced the prisoners to temporary imprisonment; but, in his abstract statement of prisoners punished without reference, remarked, that he had no doubt that the missing person died under the cruel treatment he received. The Nizamut Adawlut being of opinion that this apparently vitiated both the conviction and sentence, called for the case; and, on a revision of the trial, convicted the prisoners of being accomplices in murder, and sentenced them according to their respective degrees of guilt. *Kala Anund* v. *Pierre Aller and others.* 13th April 1831. 4 N. A. Rep. 15.—Rattray & H. Shakespear.

593. In all trials for crimes which are matters for reference to the Nizamut Adawlut, even if the sentence be declared by the *Futwa* to be barred in consequence of the insanity of the prisoner, still the proceedings must be referred for the revision and final sentence of the Nizamut Adawlut. *Government* v. *Gopal Dass and another.* 7th Dec. 1833. 4 N. A. Rep. 264.—H. Shakespear.

594. All trials for burglary, attended with corporal injury in such a degree as to endanger life, must be referred, under Cl. 4. of Sec. 8. of Reg. XVII. of 1817, for the final orders of the Nizamut Adawlut. *Jye-*

kishen Mehtee v. *Needhee Mullick and others.* 15th March 1834. 4 N. A. Rep. 284.—H. Shakespear.

(*c*) *Not referrible to, and returned by, the Nizamut Adawlut.*

595. The Session Judge referred the trial, for mitigation of the sentence of three years' imprisonment, passed by him on a prisoner convicted of *uttering* a forged receipt. Held, that as the Regulations fix no minimum punishment for the offence of *uttering* forged deeds or papers, the reference was not necessary; the Judge being competent, under Sec. 10. of Reg. XVII. of 1817, to pass any sentence he might think proper not exceeding seven years. *Sheo Lal* v. *Amaun Ali and another.* 12th March 1825. 2 N. A. Rep. 244.—C. Smith, J. Shakespear, & Dorin.

596. Under the Circular Orders, it is not necessary to refer the case of an insane person, charged with murder, where the killing may not be proved. *Mt. Lotia* v. *Goolaboo.* 21st April 1825. 2 N. A. Rep. 383.—C. Smith & H. Shakespear.

597. Under the provisions of Cl. 2. of Sec. 3. of Reg. XVI. of 1825[1] it is incumbent on the Judge of Circuit to pass the prescribed sentence on prisoners convicted of robbery by open violence, before reference, even though he should see cause for mitigation. The trial was returned, with instructions to the Judge to proceed in conformity with the Rule cited. *Government* v. *Ruhmut and others.* 20th Feb. 1828. 3 N. A. Rep. 101.—Leycester & Turnbull.

598. A case of burglary and theft having been referred to the Nizamut Adawlut, together with a case of *Dacoity*, in which the same prisoner was concerned, and he having been acquitted in the latter, the former was returned to be disposed of by the Circuit Judge. *Moohummud Waishee* v. *Puhloo Rai.* 19th March 1828. 3 N. A. Rep. 119.—Sealy & Turnbull.

[1] Rescinded by Sec. 2. of Reg. I. of 1831

599. The Judge of Circuit concurring with his law officer in convicting the prisoner of culpable homicide, though he should be of opinion that the sentence of seven years' imprisonment, which he is competent to pass, is insufficient, is bound to pass sentence without reference; the supposed inadequacy of punishment being expressly declared by Sec. 7. of Reg. XII. of 1825 not to be a legitimate ground of reference. The three cases were returned that the proper sentence might be passed. *Mt. Kandiree* v. *Boodharoo.* 1828. 3 N. A. Rep. 147.—Leycester. *Government* v. *Beneedial Singh.* 30th June 1828. 3 N. A. Rep. 162.—Leycester. *Poonit Roy Rajpoot* v. *Roop Sing Roy and another.* 4th Feb. 1834. 4 N. A. Rep. 272.—H. Shakespear.

600. The Session Judge having referred a case in which he convicted a prisoner of being concerned in an affray attended with homicide, under Sec. 4. of Reg. II. of 1823, was informed that the concluding part of that Section is modified by Sec. 2. of Reg. XII. of 1825; and that, under the last cited Rule, inadequacy of punishment is not a legal ground of reference, and he was directed to pass the sentence within his competency. *Deonarain Goala* v. *Narain Dutt.* 13th April 1833. 4 N. A. Rep. 227.—Walpole.

601. A Session Judge ought, under Cl. 3. of Sec. 4. of Reg. IX. of 1831, to pass sentence on those prisoners in whose conviction he may concur with the law officer; suspending, however, the execution of the sentence until the final orders of the Nizamut Adawlut should be received in regard to the prisoners whose cases he referred, because he differed from the *Futwa* of his law officer acquitting them. A case in which the Session Judge had not proceeded in this manner was returned, that the omission might be supplied. *Beesoo Sahoo* v. *Lukheeah and others.* 19th Nov. 1834. 4 N. A. Rep. 330.—Braddon.

602. In a trial for *Dacoity*, attended with murder, in which the principals had been previously convicted and sentenced by the Nizamut Adawlut, it is not necessary for the Session Judge to refer the trial, if he deem the prisoners under trial convicted of privity only. *Bholanath Shah* v. *Dhora*. 9th Dec. 1835. 5 N. A. Rep. 17.—Stockwell.

603. A Session Judge having referred a case to the Nizamut Adawlut, because the *Futwa* of his law officer convicted of *Shibeh-i-umd*, or culpable homicide, and he considered the prisoner convicted of aggravated culpable homicide; the Court held, that this was not a difference of opinion which rendered a reference necessary. The case was, however, disposed of by two Judges of the Court. *Sona Gazee* v. *Sudderoodeen and others*. 24th June 1837. 5 N. A. Rep. 63.—D. C. Smyth, Harding, & Braddon.

604. Under the provisions of Reg. XVI. of 1825, the case of a *Chókidár*, or village watchman, convicted of *Dacoity*, is not necessarily referrible to the Nizamut Adawlut. *Government* v. *Amanut Sheik and others*. 22d July 1837. 5 N. A. Rep. 68.—Court at large.

605. Held, that a Session Judge is bound to pass sentence on a prisoner to whose case the provisions of Sec. 7. of Reg. XII. of 1825 are applicable, notwithstanding a prisoner implicated in the same offence had been previously convicted and sentenced by the Nizamut Adawlut. *Government* v. *Dhunna Roy*. 9th March 1838. 5 N. A. Rep. 86.—Court at large.

606. The Session Judge, concurring with his law officer in convicting the prisoners of culpable homicide, is not justified in referring the trial to the Nizamut Adawlut, because he considers the punishment he can award insufficient. The case was sent back under the provisions of Cl. 1. of Sec. 7. of Reg. XII. of 1825. *Bharam Khan* v. *Amanut Khan and others*. 8th March 1839. 5 N. A. Rep. 115.—Court at large.

607. A case of conviction of administering intoxicating drugs, with a view to rob, is not necessarily referrible to the Nizamut Adawlut. The provisions of Cl. 4. of Sec. 8. of Reg. XVII. of 1817 are held to be applicable to cases of administering *poison*. *Ticca Doss* v. *Muddoo Purra*. 17th May 1839. 5 N. A. Rep. 121.—Tucker.

608. In a case of culpable homicide, in which several prisoners were concerned, the Session Judge differing from his law officer as to the guilt of only one prisoner, referred the case against the whole of them for the orders of the Nizamut Adawlut. Held, that the Session Judge should have passed sentence upon the prisoners convicted by himself, but have withheld execution until the receipt of the Court's orders on the reference, which ought to have been made in regard to the single prisoner, regarding whose guilt there was a difference of opinion between the Session Judge and his law officer. The Court disposed of the case of the single prisoner, and returned the trial, with instructions to the Session Judge to pass sentence on the other prisoners. *Boolun Bewah* v. *Buddeenath Bund and others*. 31st July 1839. 5 N. A. Rep. 139.—Rattray.

609. The Session Judge, concurring with his law officer in convicting a prisoner of wounding with intent to kill, is bound, under the provisions of Reg. XII. of 1829, to pass sentence, leaving it to the Nizamut Adawlut to call for the proceedings, should they consider the punishment inadequate. *Soorjun Doss* v. *Telohee*. 5th Oct. 1840. 5 N. A. Rep. 176.—Court at large.

(*d*) *Revision of, by the Nizamut Adawlut.*

610. In a case of four prisoners charged with *Dacoity*, the second Judge of the Nizamut Adawlut

voting for the acquittal of three, and the conviction of one; the fourth Judge for the conviction of all; the Officiating Judge, differing from both his colleagues, voting for the acquittal of three, and the conviction of one as a receiver only; sentence was issued under the signature of the three Judges on the several prisoners, conformably to the majority of opinions. *Ramchunder and another* v. *Attaboodeen and others.* 5th Sept. 1820. 2 N. A. Rep. 40.—Court at large.

611. Two Judges of the Nizamut Adawlut, fully concurring in all points of a trial, are competent to pass sentence at variance with the opinion pronounced by two other Judges, who differ from each other. *Orr* v. *Muharim and others.* 10th Dec. 1821. 2 N. A. Rep. 121.—Court at large.

612. There being only four Judges present in the Nizamut Adawlut, and differing in opinion as to a criminal sentence; it was held that there is no legal objection to the exercise of his casting voice on the part of the Officiating Chief Judge, by a modification of his opinion in favour of the prisoners. *Government* v. *Assud Ali and another.* 26th April 1825. 2 N. A. Rep. 384.—Court at large.

613. A petition having been presented to the Nizamut Adawlut for the release of a prisoner formerly sentenced by the Court, the majority of the Judges held that they had no power to interfere with the sentence, on the ground of their entertaining a difference of opinion as to the merits of the case, or as to the quantum of the punishment awarded. *Mt. Jymunee* v. *Kumul Musshalchee.* 16th Sept. 1826. 2 N. A. Rep. 477.—Court at large.

614. In the case of two prisoners, there being three Judges of the Nizamut Adawlut for the conviction, and one for the acquittal of the first, and two for acquittal, and two for the conviction of the second; the fifth Judge took up the proceedings with reference to the latter prisoner only; and being of opinion that he should be acquitted, an order for his release was issued, and, in deference to the majority, was signed by two Judges, one of whom had originally given his voice for conviction. *Government* v. *Oottum and another.* 28th Oct. 1826. 2 N. A. Rep. 483.—Court at large.

615. In a trial for murder, in which there were two prisoners, four Judges of the Nizamut Adawlut having given their opinions, and there being a difference as to one prisoner, a fifth Judge took up the case, and pronounced his opinion with reference to that prisoner only; subscribing, however, the sentence on all the prisoners drawn out according to the opinion of the two Judges, with whom he partially concurred. *Bhugwan Das* v. *Shunker Das and another.* 31st Oct. 1826. 2 N. A. Rep. 485.—Court at large.

616. In a case of nine prisoners, the Court of Nizamut Adawlut not being able to decide by a majority of voices as to the sentence to be passed on all, one of the Judges modified his opinion by reducing the term of imprisonment proposed by him to be awarded to one of the prisoners, in order to admit of the issue, against each individual, of a sentence by a majority of the Court. *Ramnarain Singh* v. *Dabee Katchee.* 13th Sept. 1827. 3 N. A. Rep. 76.—Court at large.

617. On the reference of a case of assault and murder, perpetrated fifteen years before, it was discovered that two prisoners implicated in the same transaction had, thirteen years before, been regularly tried, convicted, and sentenced as for a case of simple affray. The Court of Nizamut Adawlut held that it was not expedient to direct their re-apprehension, with a view to their being tried and sentenced to a punishment conformably to the real merits of the case. *Nunhey* v. *Puchoreh Sodah.* 2d July 1828. 3 N. A. Rep. 164.—Court at large.

618. In a case where a prisoner had evaded justice at the time when his accomplices were tried, but, being afterwards apprehended and brought to trial, circumstances came out which induced the belief that the offence previously charged had been exaggerated, it was decided that the Judge of the Nizamut Adawlut, who had passed sentence on the first trial, is competent, with the concurrence of his colleagues, to revise and modify the order passed by him without the interference of another Judge. *Government* v. *Choonee*. 27th Aug. 1833. 4 N. A. Rep. 246.—Court at large.

619. It is competent to the Nizamut Adawlut to enhance the sentence of the Sessions Court, even to death, in cases in which this penalty may be legally inflicted under the Regulations. *Government* v. *Jowahir and others*. 15th Oct. 1835. 5 N. A. Rep. 11.—Court at large.

620. Imprisonment in transportation beyond sea for life was held to be a more severe sentence than imprisonment for life in the Allipore jail, and to require two voices in the Nizamut Adawlut when the Session Judge may recommend the latter sentence. *Nyne Koeree* v. *Ramdial Bhoonia and others*. 9th Jan. 1838. 5 N. A. Rep. 80.—Reid & Halhed.

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76. *Trove.*

621. Under the Muhammadan law, a *Multahit*, or finder, failing to make public advertisement of *Luktah*, or trove property, subjects himself to discretionary punishment.[1] *Chundoo* v. *Sheikh Roopun and others*. 15th May 1815. 1 N. A. Rep. 308.—Fombelle & Ker.

[1] *Luktah*, or trove property, is considered as a trust in the hands of the *Multahit*, or finder, when he has called persons to witness "that he takes such property in order to preserve it, and that he will now restore it to the proprietor," because this mode of taking it is authorized by law, and is even the most eligible conduct.—2 Hed. 264.

77. *Tashhir.*

622. *Tashhir* cannot be inflicted for any offence not expressly authorized by the Regulations. *Rujeem Buksh* v. *Yar Mohummud*. 26th March 1811. 1 N. A. Rep. 223.—Harington & Fombelle.

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78. *Warrant.*

623. When it shall incidentally appear to a Magistrate that there are grounds for searching a person's house for stolen property, it is not necessary that, previous to the issue of a search warrant, oath should be made to its containing stolen property. *Ramkishore Paul* v. *Ram Singh*. 13th Sept. 1813. 1 N. A. Rep. 273.—H. Colebrooke & Fombelle.

624. It is provided by Cl. 4. of Sec. 11. of Reg. I. of 1811 that search warrants for the recovery of stolen property shall not be issued, unless the complainant or informer shall make oath, or subscribe a solemn declaration, that a robbery has been actually committed, and that he has a reasonable cause to suspect that the effects stolen are lodged in such a house or place, or unless it shall appear incidentally from any proceeding holden by a Magistrate that stolen property is there deposited. *Ib.*

625. Sec. 4. of Reg. IX. of 1807 expressly authorizes the issue of a warrant to apprehend persons charged with serious offences, upon credible information, without written complaint or deposition upon oath. *Government* v. *Beaufort and others*. 7th Aug. 1813. 1 N. A. Rep. 277.—H. Colebrooke, Fombelle, & Stuart.

626. A warrant of release should always follow an acquittal, even though the prisoner may have been previously convicted on another charge. *Anundee Singh* v. *Kunhia Singh and others*. 16th Feb. 1820. 2 N. A. Rep. 10.—Leycester.

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79. *Wounding.*

627. The prisoner was convicted of wounding the prosecutor with a

sword; and sentenced, under Sec. 4. of Reg. XVII. of 1817; in opposition to the *Futwa* which acquitted him on the ground of there being but one eye-witness (besides the prosecutor) to the charge. Sentence, imprisonment for seven years. *Casheeram* v. *Chundeedeen.* 6th March 1823. 2 N. A. Rep. 239.—C. Smith & J. Shakespear.

628. In a case of a prisoner committed for trial on a charge of "severely wounding," the Court of Nizamut Adawlut held that it was not competent to the Commissioner to convict and sentence him for the more serious offence of "wounding with intent to murder." But being of opinion that the prisoner ought to have been committed on the latter charge, they annulled the former commitment and the proceedings on the trial; and ordered him to be tried *de novo* for the graver offence of "wounding with intent to murder." The prisoner was accordingly re-tried, and sentenced by the Commissioner to fourteen years' imprisonment, under Cl. 3. of Sec. 2. of Reg. XII. of 1829. The Court, deeming the prisoner convicted of deliberate intent to commit murder, annulled the sentence as inadequate, and sentenced him to be imprisoned for life. *Government* v. *Harrochunder Chucherbutty.* 20th July 1831. 4 N. A. Rep. 59.—Turnbull & H. Shakespear.

629. The prisoner having been convicted by the Commissioner of wounding with intent to kill, and sentenced to imprisonment for fourteen years, the Nizamut Adawlut, on a revision of the proceedings, deemed the sentence inadequate, and sentenced the prisoner to imprisonment for life. *Mt. Goohee Hareen* v. *Bungsee Haree.* 26th Aug. 1831. 4 N. A. Rep. 81.—Ross & H. Shakespear.

630. The *Futwa* of the law officers found that the prisoner wounded the prosecutor, with intent to kill, while in the act of adultery with the prisoner's wife, but declared the prisoner entitled to his release. The Commissioner was of opinion, that as the prisoner lay in wait for the parties with a deadly weapon, with a deliberate intention to destroy the prosecutor, he was deserving of punishment. But the Court, concurring with the law officers, released the prisoner. *Ramchand* v. *Kumal Baydee.* 10th Nov. 1831. 4 N. A. Rep. 98.—Sealy & Rattray.

631. In a similar case, the Court deemed a sentence of imprisonment for seven years inadequate, and sentenced the prisoner to imprisonment for life. *Mt. Sukhoo* v. *Baboo Ram.* 13th Oct. 1832. 4 N. A. Rep. 175.—Rattray & H. Shakespear.

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80. *Young Persons, offences committed by.*

632. A boy of twelve years of age, was convicted of the murder of a child of five years for its ornaments; but in consideration of his not having attained the age of maturity when he committed the crime, he was, in conformity with the *Futwa*, sentenced to thirty lashes and imprisonment for five years. *Seedhoo* v. *Roopa.* 18th June 1807. 1 N. A. Rep. 148.—Harington & Fombelle.

633. The principal evidence against the prisoner, a boy of twelve or thirteen years of age, who was arraigned for the murder, for the sake of the ornaments, of one of his companions, a few years younger than himself, being furnished by his own voluntary confession, that evidence was declared, by the law officer, to be insufficient by reason of his non-age. But this doctrine was overruled by the Court, and the prisoner declared fully convicted; and there appearing no other circumstance than his minority in his favour to render him a proper object of mercy, and it being proved that he was *doli capax* when he committed the crime, he was sentenced to imprisonment in transportation for life. *Mt. Sahibhoonnur* v. *Sudasookh.* 20th Jan. 1820. 2 N. A. Rep. 2.—Fendall & Goad.

634. The prisoner was charged with cutting off the *membrum virile* of the prosecutor. The law officer of the Nizamut Adawlut acquitted the prisoner in consequence of the *Ibráa* of the prosecutor, and the non-age of the prisoner; the wilful act of a person supposed to be in her non-age being, in the Muhammadan law, considered to be (*Khatáa*) accidental. The Court of Nizamut Adawlut did not concur in the *Futwa*, but judged themselves incompetent, under the existing Regulations, to punish, and therefore released the prisoner.[1] *Juttee Ram* v. *Jye Munnee.* 20th July 1820. 2 N. A. Rep. 29.—C. Smith & Goad.

635. The prisoner, a youth, was punished, on conviction of carnally knowing a girl aged eight years, at which age her consent was immaterial, with fifteen rattans and six months' imprisonment. *Mirooa* v. *Lullooa.* 10th April 1826. 2 N. A. Rep. 452.—C. Smith & Sealy.

636. A boy only ten years old being convicted by the *Futwa* of rape on a girl only three years old, the Court of Nizamut Adawlut viewed it as an attempt only, and punished it, as a misdemeanour, with one year's imprisonment. *Kureem Noorbaf* v. *Meeun Noorbaf.* 14th Nov. 1827. 3 N. A. Rep. 87.—Leycester & Dorin.

CULPABLE HOMICIDE.—See CRIMINAL LAW, 182, 183.

CURATOR.

1. To justify the appointment of a curator of the estate and effects of a deceased under Act XIX. of 1841, the affidavit must satisfy the Court that the possession is wrongful, and not merely disputed. *In the goods of Hurrokistno Paul.* 24th Oct. 1842. 1 Fulton, 83. *In the goods of Sreemutty Ohilmoney Dossee.* 7th Nov. 1842. 1 Fulton, 90.

2. To justify the appointment of a curator, it must be shewn on the affidavits that there is danger of waste or misappropriation of the property; and such danger will not be inferred merely from a dispute as to the succession. *In the goods of Shaik Nathoo.* 24th July 1844. 1 Fulton, 483.

CUSTOM & PRESCRIPTION.

I. VALIDITY AND OPERATION GENERALLY, 1
II. AS TO ZAMÍNDÁRS, 6.
III. INHERITANCE BY CUSTOM.—See INHERITANCE, 199 *et seq.*, 307 *et seq.*

I. VALIDITY AND OPERATION GENERALLY.

1. The proprietary dues levied on iron ore manufactured do not necessarily belong to the proprietor of the soil, if it should have been the usage to consider such property as distinct from the soil. *Gooroopershad Bose and others* v. *Bisnoochurn Heyra.* 31st July 1811. 1 S. D. A. Rep. 337.—Harington & Stuart.

2. A person settling in a foreign district shall not be deprived of the benefit of the laws of his native district, provided he adhere to its customs and usages. *Gungadutt Jha* v. *Sreenaraen Rai and another.* 24th April 1812. 2 S. D. A. Rep. 11.—Harington & Stuart. *Rutcheputty Dutt Jha and others* v. *Rajunder Narain Rae and another.* 12th Feb. 1839. 2 Moore Ind. App. 132. *Rany Pudmavati* v. *Baboo Doolar Sing and others.* 30th June 1847. MS. Notes of P. C. Cases.

3. The office of *Mohant* having been by usage elective, such usage must be preferred to any other mode of succession; nor can any relinquishment or devise in favour of another person operate further than as a nomination, which, to avail, must be confirmed by the usual mode of election. *Narain Das* v. *Bindrabin Das.* 10th May 1815. 2 S. D. A. Rep. 151.—Harington & Rees.

4. A custom recommended by uti-

[1] Such cases have been provided for by Sec. 3. of Reg. IV. of 1822.

lity, though not prescribed by the Regulations, should be respected as a law. *Vencata Narsinha Naidoo and another* v. *Panoomurtee Letchemputy Shastrooloo.* Case 2 of 1819. 1 Mad. Dec. 219.—Harris & Cherry.

5. Family usage may be a valid plea against the operation of general law, but must be established by clear and positive proof. *Rája Baidyanand Singh* v. *Rudranand Singh.* 25th April 1832. 5 S. D. A. Rep. 198.—Walpole.

II. As to Zamíndárs.

6. Held, that in accordance with the local usage, the lands of the *Zamíndári* of Tipperah are indivisible, as being an estate of the nature contemplated by Reg. X. of 1800. *Ramgunga Deo* v. *Doorgamunee Jobraj.* 24th March 1809. 1 S. D. A. Rep. 270.—Harington & Fombelle. *Maharajah Kishen Kishore Manick* v. *Mt. Hurree Mala.* 28th March 1837. 6 S. D. A. Rep. 155.—C. Smith, Braddon, & Harding. *Same* v. *Ranee Kotee Lukhee Debbea.* 4th May 1837. 6 S. D. A. Rep. 157.—Braddon & Harding.

7. And that such lands by the local usage are unalienable by the reigning Rájah for a period extending beyond the term of his own life. *Maharajah Kishen Kishore Manick* v. *Mt. Hurree Mala.* 28th March 1837. 6 S. D. A. Rep. 155.—C. Smith, Braddon, & Harding. *Same* v. *Ranee Kotee Lukhee Debbea.* 4th May 1837. 6 S. D. A. Rep. 157.—Braddon & Harding.

8. A *Zamíndár* resisted a claim set up by certain firewood merchants to the privilege of cutting firewood in the jungles of his *Zamíndári* without paying any consideration to him. It was not pretended that any exaction had been made by the Government previously to the permanent settlement. Held, that, by the permanent settlement, the Government transferred to *Zamíndárs* (with certain specified exceptions) the proprietary right exercised by itself; and that all usages which are not specially abrogated by the Regulations must be held to be confirmed; and if, previously to the introduction of the permanent settlement, no payment was exacted by the Government, none could be exacted by the *Zamíndár.* *Zamíndár of Devee* v. ———. Case 18 of 1812. 1 Mad. Dec. 70.—Scott, Greenway, & Stratton.

9. An action by a *Zamíndár* for resumption of a *Jágír* was decided in his favour, it being proved that the *Jágír* was conferred in lieu of service, and that it had been the practice for the *Zamíndár* to resume such grants on the death of the *Jágírdár* without lineal descendants. *Thakoorain Mt. Roopnath Konwur* v. *Maharajah Juggunath Sahee Deo.* 3d Dec. 1836. 6 S. D. A. Rep. 133.—Money.

10. By the family usage of the *Zamíndárs* of Pachete, the successor to the *Ráj* has full power to annul, cancel, alter, modify, or confirm, the arrangements of his predecessor, and such usage supersedes the ordinary rules of inheritance. *Maharajah Gurunarain Deo* v. *Unund Lal Singh.* 24th Feb. 1840. 6 S. D. A. Rep. 282.—Rattray & Lee Warner.

CUSTOMS.—See Dues and Duties, *passim.*

CUSTOM-HOUSE OFFICER.

1. It was held that the right of detention of goods at the custom-house till the duties could be ascertained, and till payment of the proper duties, is necessarily implied in the Stat. 53d Geo. III. c. 165. ss. 98—100. *Budden Soorye and another* v. *Sir G. D'Oyley.* 5th Feb. 1819. East's Notes, Case 98.

DACOITY.—See Criminal Law, 184 *et seq.*, 274. 279. 324.

DÁKHILAH. — See DAMAGES, 3, 4. 6.

DAMAGES.

I. IN THE SUPREME COURTS.
1. *Generally*, 1.
2. *For Libel and Slander.*—*See* DEFAMATION, 1, 2.
3. *Assessment of.*—*See* PRACTICE, 59 *et seq.*

II. IN THE COURTS OF THE HONOURABLE COMPANY.
1. *Generally*, 3.
2. *For loss of Cast.*—*See* CAST, *passim.*
3. *For Libel and Slander.*—*See* DEFAMATION, 3 *et seq.*
4. *Action for Damages.*—*See* ACTION, 50; DEFAMATION, 8 *et seq.*

I. IN THE SUPREME COURTS.

1. *Generally.*

1. It appeared that where the plaint did not allege any particular kind of "rupees" in laying the damages, the damages might be given in *Sicca* rupees when those were the currency of the country.[1] *Ramder Mitter* v. *Nunduloll Mitter.* 16th July 1779. Mor. 237.

2. Per Ryan, C. J.—The measure of damages in an action for non-acceptance of goods is the difference between the price at which the goods were sold and the market price at the time the contract was broken. Where no evidence of this has been given at the trial, the Court will reduce the verdict to nominal damages, but without costs. *Bullub Doss* v. ———. 11th July 1839. Barwell's Notes, 86.

[1] Company's rupees are now the currency of the country.—Mor.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

1. *Generally.*

3. In a suit by a dependent *Taloukdár* against a *Zamíndár* for damages, for having refused him *Dákhilahs*, or receipts, on his payment of several years' rent, the Zillah Court, under the provisions of Sec. 63. of Reg. VIII. of 1793, adjudged to the plaintiff damages equal to double the amount paid; but this judgment was reversed by the Sudder Dewanny Adawlut, on the ground that the plaintiff demanded receipts for an *Istimrárí*, or fixed rent, without any title on his part to a fixed rent being proved or appearing probable; and that, therefore, the *Zamíndárs* were justified in refusing receipts as for a fixed rent; and that having so done, they were not liable to the penalty specified in Sec. 63. of Reg. VIII. of 1793. *Lala Gobind Lal* v. *Srinarain Rai and another.* 31st July 1810. 1 S. D. A. Rep. 304.—Fombelle & Stuart.

4. The plaintiffs sued as dependent *Taloukdárs*, to obtain from the *Zamíndár* receipts for rent paid by them. The *Zamíndár* was willing to grant receipts to the plaintiffs as *Ijárahdárs*, but not as *Taloukdárs.* The Courts, on the proof that the plaintiffs were *Taloukdárs*, decreed that the *Zamíndár* should grant them receipts as such; but the cause of the refusal to grant receipts being a dispute concerning the tenure, the provisions of Cl. 1. of Sec. 63. of Reg. VIII. of 1793 were not considered applicable to the case.[2] *Sheonarain*

[2] The clause referred to directs the landholders and their agents to give receipts for all sums received by them; and adds, "any person to whom a receipt may be refused, on his establishing the same in the Dewanny Adawlut of the Zillah, shall be entitled to damages from the party who received his rent or revenue, and refused the receipts, equal to double the amount paid by him."

Chowdry and others v. *Kowlakaunt Gosain and others.* 25th Jan. 1817. 2 S. D. A. Rep. 221.—Ker & Oswald.

5. Damages were awarded to a debtor because his creditor had stopped him in the high road whilst proceeding from one town to another, and subjected him to duress. *Behchur Joita* v. *Jeta Jeevun.* 23d March 1819. 1 Borr. 436.—Romer & Sutherland.

6. Under Sec. 63. of Reg. VIII. of 1793 *A* brought an action against *B* for having refused to give him *Dákhilahs* for rent paid. The suit was dismissed with costs, because no dishonest intention was proved against *B*, and because *A* had not brought the suit within one year from the date on which the action originated. *Ram Narain Mookergee* v. *Sumboo Chunder Mookergee.* 14th April 1835. 6 S. D. A. Rep. 26.—H. Shakespear.

7. Damages for striking a high priest of the Pársís in the face were decreed to be paid by the offender. The damages were laid at Rs. 800; but because of the poverty of the offender, and the heavy costs, it was held that he should pay damages Rs. 25, and the costs in both Courts. *Dustoor Dada Bhaee Roostumjee* v. *Andharoo Khoorshedjee Ruttunjee.* 18th July 1822. 2 Borr. 333.—Romer, Sutherland, & Barnard.

7 *a.* A *Zamíndár* cannot arbitrarily dispose of the persons or property of his servants without having recourse to the prescribed legal process, even though he have a just demand against them for frauds and embezzlements committed in discharge of the trusts confided to them; and he is liable for damages for any such unlawful restraint of their persons, or disposition of their property.[1] *Aroovela Roodrapah Naidoo and another* v. *Rajah Damerla Coomara Pedda Vencatapah Naidoo Bahadoor.* Case 11 of 1824. 1 Mad. Dec. 471.—Grant, Cochrane, & Oliver.

8. The plaintiff suing to recover a sum of money taken from him under an award, the Zillah Judge decreed the sum claimed, and damages and costs, under Sec. 6. of Reg. XXVIII. of 1803, which the plaintiff had not sued for. This part of the decree was reversed, and costs made payable by the losing party, only on the sum originally sued for. *Ram Pershad Avustee* v. *Udaroo.* 12th Dec. 1827. 4 S. D. A. Rep. 293.—C. Smith & Sealy.

9. *A*, an officer of police, illegally, though for a short time, arrested *B*, and offered to strike him. On *B*'s suit for damages, laid at Rs. 10,000, the Court awarded Rs. 100, and a rateable share of costs, the plaintiff having made an excessive claim in order to oppress the defendant with costs. *Manir Ud Din* v. *Jai Sankar Sandial.* 27th August 1832. 5 S. D. A. Rep. 229.—Shakespear & Walpole.

10. *A* sued to recover a given sum as profits of a defined quantity of land. The decree of a Lower Court, awarding a less sum, arbitrarily taken as damages, was affirmed in the Sudder Dewanny Adawlut. *Brij Náth Bábú* v. *Raghu Náth Ojha.* 30th August 1832. 5 S. D. A. Rep. 231.—H. Shakespear.

11. Damages were awarded on the suit of the plaintiff against a police *Dáróghah*, for the illegal search of the plaintiff's house in a case of theft, the *Dáróghah* having instituted such search under a verbal order given by a Magistrate, in consequence of information afforded by himself, and such information being without sufficient foundation; the search, moreover, having been conducted with circumstances of considerable aggravation. *Munneeooddeen Darogah* v. *Hurree Pershad Mundul.* 20th Aug. 1835. 6 S. D. A. Rep. 39.—Robertson.

12. In an action for damages preferred by an uncovenanted judicial officer against a party who had charged

[1] This decision was affirmed on appeal to the Judicial Committee of the Privy Council on the 11th of August 1841

him with corruption in the discharge of his official duty, the Sudder Dewanny Adawlut confirmed the judgment of the Lower Court, which awarded to the plaintiff damages to the amount of Rs. 1000.[1] *Bhyrub Chunder Bhose* v. *Thomas.* 4th Aug. 1836. 6 S. D. A. Rep. 97.—Stockwell, Braddon, & Barwell.

13. Held, that a civil suit for damages is the only means by which a *Kází*, under Reg. III. of 1808, can exclude others from performing the duties of that officer. *Anon.* 27th April 1837. Campb. Reg. 189, note. (Fouj. Ad.)

14. The plaintiff having agreed to receive a fixed sum from the defendant as damages for an assault and false imprisonment, which sum the defendant failed to pay, the plaintiff sued for damages in excess of the amount agreed upon between the parties. Held, that, under the circumstances, the plaintiff was entitled to the amount which he had originally consented to receive, together with all costs of suit. *Muthoornath Mullick* v. *Marshall Collyer.* 31st Dec. 1839. 6 S. D. A. Rep. 275.—Rattray & Lee Warner.

15. It having been proved that one of the defendants, a *Zamíndár*, had instigated a riotous attack on the *Zamíndárí kach'harí* of the plaintiff, the Court, on the suit of the latter, awarded to him the value of the property plundered, and a reasonable sum as damages. *Mt. Sidhisree Debea and others* v. *Wise.* 30th Nov. 1843. 7 S. D. A. Rep. 136.—Tucker, Reid, & Barlow.

[1] In this case Mr. Halhed considered the plaintiff as not entitled to any damages, as "he had not in any way been a sufferer by the charge preferred against him," the charge having been shewn to be utterly false, but the other Judges concurred in thinking that it could not be said that a man had not been a sufferer by a charge of bribery, merely because the charge was not proved, and that he had not lost his situation by reason of it; and that his having been subjected to the inquiry, the stigma upon his character until cleared, and the anxiety of mind, clearly entitled him to damages.

DARPATNÍDÁR.—See LAND TENURES, 28, 32*a*, 32*b*.

DATTAKA.—See ADOPTION, *passim.*—INHERITANCE 22, *et seq.*

DEATH, PROOF OF.—See EVIDENCE, 8, *et seq.* 20. 87.

DEBT.

I. IN THE SUPREME COURTS, 1.
II. IN THE COURTS OF THE HONOURABLE COMPANY, 5.
III. LIABILITY OF A HINDÚ WIDOW FOR HER HUSBAND'S DEBTS.—See HINDÚ WIDOW, 33 *et seq.*

I. IN THE SUPREME COURTS.

1. A debt due for money advanced on a deed of partnership under seal is only a simple contract debt, because no sum certain was mentioned in the deed, but the sum due was matter of account. *In the goods of Peacock.* Hyde's Notes, 12th Nov. 1781. Mor. 6.

2. Process may be issued for a debt contracted in the towns of Calcutta or Bombay when the contractor has left such towns. *Kallican* v. *Juggernauth Dutt.* Hyde's Notes. 27th Jan. 1777. Mor. 119. *Madoo Wissenauth* v. *Balloo Gunnassett.*[2] 30th Jan. 1818. Mor. 149.

3. Per Anstruther, R.—Lands and houses are responsible for the simple contract debts of the deceased owners. *Doe dem. de Silveira* v. *Salvador Bernardo Teixeira.* Perry's Notes. Case 1.

4. Per East, C. J.—Land, though real property in its nature and tenure, is made subject to debts in the hands of British, Hindú, or Musulmán sub-

[2] In the Recorder's Court, Bombay.

jects; in the hands of the two latter by their general codes; in the hands of the British subjects, by the terms or construction of the Charter, and of the Acts auxiliary to it. *Joseph* v. *Ronald.* 1 Moore Ind. App. 327.

II. In the Courts of the Honourable Company.

5. The original amount of a loan is not forfeited by a stipulation for illegal interest; nor is a bond taken through adjustment of a debt, bearing such interest, held to be an attempt to elude the Regulations, and obtain interest upon interest, which would involve forfeiture of the principal. *Rai Balqovind* v. *Sheikh Gholam Ali.* 24th June 1805. 1 S. D. A. Rep. 93. — H. Colebrooke & Fombelle.

6. Acquittances of a debt, granted conditionally, are of no avail if the condition be not fulfilled. *Raja Jyporkas Sing* v. *Jog Rai Sahoo.* 10th Sept. 1811. 1 S. D. A. Rep. 343.—Harington & Fombelle.

7. Part of a debt having been realized by process of the Supreme Court, and the action there having been discontinued, it is still competent to the claimant to sue for the remainder in a Provincial Court, though the claim to be reimbursed the costs of suit incurred in the former Court will be rejected. *Munoher Lal* v. *Ramnarain Ghose.* 16th Jan. 1821. 3 S. D. A. Rep. 66.—C. Smith.

DEBTOR AND CREDITOR.

I. Hindú Law.
1. *Generally*, 1.
2. *Liability of a Widow for Debts.* — *See* Hindú Widow, 33 *et seq.*
II. Muhammadan Law, 7.
III. In the Supreme Courts, 9.
IV. In the Courts of the Honourable Company.
1. *Generally*, 13.
2. *Liability of Partners.*—*See* Partner, 5 *et seq.*

I. Hindú Law.

1. *Generally.*

1. A Hindú possessing himself of the land of his father is bound to pay his debts.[1] *Jamoonah Raur* v. *Mudden Day and another.* 20th Jan. 1785. Hyde's Notes. Sm. R. 143. *Banarassy Ghose* v. *Ramtonoo Dutt and others.* 20th Nov. 1788. Chamb. Notes. Sm. R. 144.

2. A son was declared not to be liable for certain debts or engagements of his father, among which was that of giving money, or agreeing to give money, in consideration of receiving a girl from her family to be married to his son, which came under the denomination of *Shulk*, and was forbidden by the law. *Keshow Rao Diwakur* v. *Naro Junardhun Patunkur.* 16th March 1822. 2 Borr. 194.—Romer, Sutherland, & Ironside.

3. The sons of a Hindú (taken in execution of a decree, and dying in gaol) were held to be liable for their father's debts in property, but not in person. *Manukchund Purbhoo* v. *Deokristn Tooljaram.* 24th June 1824. Sel. Rep. 9.—Romer, Sutherland, and Ironside.

4. And it was held, that although it is incumbent upon every Hindú to pay, when he may be able, the debts of his father, with interest, and those of his grandfather, without[2], even

[1] Menu, B. viii. v 159. 166. 1 Coleb. Dig. 268, *et seq.* Macn. Cons. H. L 398. 1 Macn. Princ. H. L. 127. 274. 2 Do. 276. 1 Str. H. L. 166, *et seq* 2 Do. 274.

[2] This is according to the Mitácshará. 1 Coleb Dig. 270. 1 Str H L. 167. 2 Do. 274—279. By the law of Bengal the son is under no legal responsibility, independent of assets. 1 Coleb. Dig. 266, note. 320. 1 Str. H L. 167. 1 Macn. Princ. H. L 127, where Sir W. Macnaghten extends the liability of the descendants to the great grandson, should there be assets. But it is ex-

should he not have inherited any assets from them; yet, at the same time, it is incumbent upon the creditors to leave him at liberty until he shall have acquired a sufficient sum for the payment thereof. *Hurree Kussun* v. *Runchor*. 25th Oct. 1811. Sel. Rep. 10.—Crow, Day, & Romer.

5. A creditor is bound by the Hindú law first to establish his demand against the original debtor before he can come upon the security for that debtor to pay the debt. And where the appellant claimed against a widow, to enforce payment of a security entered into by her late husband for a third person to the appellant, he was nonsuited. *Bhaee Shah Keshoor* v. *Rajkoonwur*. 6th Nov. 1812. 1 Borr. 93.—Sir E. Nepean, Brown, Elphinston, & Bell.

6. Money having been borrowed to discharge arrears of government revenue by a person erroneously registered as proprietor of an estate, the rightful proprietor, on coming into possession, will be held liable for the debt. *Gopee Churun Burral* v. *Mt. Lukhee Tishwuree Dibia*. 5th June 1821. 3 S. D. A. Rep. 93.—Goad.

II. Muhammadan Law.

7. By the Muhammadan law, the heir of a deceased Musulmán is liable to pay the debts of the deceased to the extent of the assets to which he may have succeeded; but is not bound to pay the whole of his debts.[1] *Mt. Pootee Begum, Applicant*. 17th June 1840. 1 Sev. Cases, 57.—Reid.

8. Debts, which must be satisfied before legacies and claims of inheritance, lie only against the estate of the deceased debtor. *Ib.*

pressly stated in 1 Coleb Dig 266 that the payment by the great grandson is purely optional

[1] 1 Macn Princ M L 72 For the law of debtor and creditor, according to the *Imámiyah* doctrine, see Baillie, Dig M L 265 *et seq*

III. In the Supreme Courts.

9. A bond creditor petitioning for administration will be preferred to a greater creditor whose debt was on simple contract. *In the goods of Peacock*. Hyde's Notes. 12th Nov. 1781. Mor. 6. *In the goods of Kellican*. 1st Term 1786. Mor. 10.

10. In the same manner a judgment creditor will be preferred to a bond creditor. But among creditors of equal degree, the magnitude of the debt determines this preference. *In the goods of Lovejoy*. Chamb. Notes. 31st Oct. 1787. Mor. 12.

11. Where a fund was settled on the children of a marriage, and one of the children afterwards married a man who did not reduce the fund into his possession during her life; and after her death, leaving a daughter, he took out administration to his said wife; and, after contracting debts, applied, with his daughter, to have the whole fund which had been the settled portion of the daughter settled upon the daughter, he waiving all claim thereto; the Court held that his creditors had also an equity in his equitable claim on the fund, and therefore decreed that the fund should be divided between the creditors and the daughter. *Sukies* v. *Sukies*. 28th Jan. 1816. 2 East's Notes. Case 42.

12. Where a bill was filed by a creditor against an executor, for an account, &c., on behalf of himself and such other creditors as should come in and contribute to the expense; it was held, that though he should prove his debt before the Master, and obtain a decree for the same, yet he should not have priority over other creditors who had come in under the decree. *Dingwall* v. *Alexander*. 12th Nov. 1818. 3 East's Notes. Case 87.

IV. In the Courts of the Honourable Company.

1. *Generally.*

13. A person having taken a lease

of a village for twenty-one years from the proprietors of the village, in order to repay himself a debt due from them, was, after a time, ejected by them, and claimed a right of occupation during the remainder of the term. But it having been proved that the lessee of the village had sufficiently remunerated himself during his actual enjoyment of the village, the Court dismissed his claim. *Veesajee Gopaljee Jala* v. *Bawajee Bulyajee and others.* 2d Sept. 1814. 1 Borr. 99.—Sir E. Nepean, Brown, & Elphinston.

14. Pársís were held not to be liable for a father's debts, unless they received his property, as they are entitled by the Regulations, and particularly by Sec. 42. of Reg. III. of 1800, to the benefits of the English law.[1] *Lulloo Bhaee Girdhurdass* v. *Sorabjee and another.* 2d Sept. 1814. 1 Borr. 121.—Sir E. Nepean, Brown, Elphinston, & Bell.

15. A debt is contracted by *B*, the mother of *A*. *A* enters into a written agreement to discharge it out of a pension granted to him by the Honourable Company, which pension he mortgages as security. He dies without paying the debt, or any part of it, and before it or any part of it becomes due. The pension is continued by the Company to *C*, *D*, and *E*, the sons and widow of *A*: it did not appear that *C*, *D*, and *E* inherited any property either from *A* or *B*. The Court considered the question to be such as, by Sec. 16. of Reg. III. of 1802,[2] does not require a reference to their law officers, but such as common equity might determine without infringing any particular law; and it was held, that, as the Honourable Company granted the pension first to *A*, and afterwards to his widow and sons, it may have been chiefly his property during his life, but certainly was exclusively theirs after his death: at his death, the property out of which the debt was to be paid ceased to form any part of his estate. *C*, *D*, and *E* were also held not to be responsible, out of property acquired by themselves, for a debt which they neither contracted nor engaged to pay; and moreover, that the pension alone, having been mortgaged for the debt, no other property of *A*, possessed by him, or inherited from him by *C*, *D*, and *E*, could have been responsible for it, either during his life or after his death. *Shureef Ahmud* v. *Fakeer Sahib and another.* Case 4 of 1821. 1 Mad. Dec. 280.—Harris & Graeme.

16. A restriction in an *ex parte* decree, confining execution to the property of the absent debtor, was set aside by the Superior Court, no cause appearing, under the circumstances, for warranting execution *only* against his property; and the debtor was made liable, both in person and property, for the amount of the decree of the Zillah Court, and its costs, together with half those in the Superior Court. *Mihirwanjee and another* v. *Lukmeeram Goolabraee.* 6th Sept. 1821. 2 Borr. 136.—Elphinston & Ironside.

17. An arbitrary deduction from a creditor's bill was held not binding on the creditor without his consent. *Dada Bhaee Ruttunjee* v. *Nimmo.* 12th March 1822. 2 Borr. 339.—Romer & Ironside.

18. A creditor is not at liberty to charge interest by the custom of Surat until two months after delivery of the goods, whether interest were agreed for or not; and if the goods are paid for within that time, a charge for interest will not be allowed. *Ib.*

19. Where a person became secu-

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[1] The application of this law in the present case appears to be erroneous, as the Regulation refers only to criminal cases, and the Section referred to merely provides for a reference to the Governor in Council when the Court or Magistrate "feels at a loss on the proper application of the English law in the instance of the trials of Christians or Parsis". There is nothing explicit in the Regulations on the subject.—Borr. This Regulation was rescinded by Sec. 2. of Reg. I of 1827.

[2] This Section has been extended by Sec. 2 of Reg. III of 1828.

rity for a debtor to his creditor, and the creditor executed a decree against both by imprisoning the debtor alone; it was held that the creditor was entitled, under Sec. 26. of Reg. V. of 1820,[1] to full interest on all sums recoverable under the decree, affirmed, as this was, on the appeal, until satisfaction of his decree. *Dhoollubh Mooljee* v. *Rughoonath Kulyan.* 23d Jan. 1823. 2 Borr. 399.—Romer, Sutherland, & Ironside.

20. It was held, reversing the decree of the Zillah Judge (W. Jones), that a person cannot recover from another a sum due by a third for whom he had become verbally responsible. *Bheekareedass Udehurm and others* v. *Doolubh Nurbeeram.* 27th Jan. 1823. Sel. Rep. 15.—Romer, Sutherland, & Ironside.

21. A *Mukhtor námeh*, or power of attorney, accepted by a creditor from his debtor for the collection of outstanding debts to a certain amount, was held to be a complete acquittance for that amount of his claims against the debtor; but of such assigned debts some privately collected by the debtor were decreed to the creditor. *Brijbhookun* v. *Lala.* 8th May 1823. 2 Borr. 487.—Romer, Sutherland, & Ironside.

22. *A* and *B* filed a suit in the Zillah Court against *C* and *D* for the recovery of certain outstanding balances, which was dismissed with costs. On appeal, and whilst such appeal was pending, *C* acknowledged and liquidated his share of the balance sued for. Held, that the acknowledgment given by *C* cannot be looked upon as proof of liability on the part of *D*. *Lala Gopal Narain and another* v. *Ajooba Singh.* 11th Aug. 1835. 6 S. D. A. Rep. 38.—Rattray & Stockwell.

DECENNIAL SETTLEMENT.—See Assessment, 14; Forcible Dispossession, 4; Lease, 19; Málikanah, 4; Settlement, 10. 12. 14, 15.

[1] Rescinded by Sec. 1. of Reg. I of 1827

DECLARATION.—See Pleading, 2 *et seq.*

DECREE.

I. In the Supreme Courts.—See Practice, 161, 162.
II. In the Courts of the Honourable Company.
1. *Reversal of—See* Practice, 263 *et seq.*
2. *Interest on.—See* Interest, 38 *et seq.*
3. *In Criminal Cases.—See* Criminal Law, 187.

DEED.

I. Hindú Law.
1. *Construction & Operation*, 1.
2. *Fraudulent and Void*, 3.
3. *Deed of Compromise.—See* Compromise, 3, 4. 9.
4. *Deed of Gift.—See* Gift, 21 *et seq.*
II. Muhammadan Law.
1. *Construction & Operation*, 8.
2. *Fraudulent and Void*, 10.
3. *Deed of Compromise.—See* Compromise, 7.
4. *Deed of Gift.—See* Gift, 63 *et seq.*
5. *Marriage Settlement.—See* Gift, 78; Husband and Wife, 39 *et seq.*
III. In the Supreme Courts, 15.
IV. In the Courts of the Honourable Company.
1. *Execution*, 18.
2. *Construction & Operation*, 20.
3. *Fraudulent and Void*, 23.
4. *Registration*, 29.
5. *Stamps on Deeds*, 30.
6. *Deed of Compromise.—See* Compromise *passim.*
7. *Deed of Partnership.—See* Partner, *passim.*

I. Hindú Law.

1. *Construction and Operation.*

1. A Hindú, having no son, exe-

cutes a deed, whereby he grants to his senior widow all his acquired property, in the event of no son being born; but otherwise, to such son. Held, that no son being born, the widow takes the estate under the deed, with power to alienate it.[1] *Kishen Govind* v. *Ladlee Mohun Thakoor.* 30th Aug. 1819. 2 S. D. A. Rep. 309.

2. The widow and great nephews, by the mother's side, of a deceased Hindú, having agreed to a certain division of his property, and signed an *Ikhtiyár námeh* to that effect, the widow having previously executed a deed of gift disposing of the whole property; it was held that such *Ikhtiyár námeh* annulled the deed of gift, the later being the only valid document of the two. *Mt. Umroot* v. *Kulyandas.* 5th July 1820. 1 Borr. 284. — Elphinston, Colville, Bell, & Prendergast.

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2. *Fraudulent and Void.*

3. In a suit by a Hindú widow against the brothers of her husband, who died childless, to which the defendants pleaded a conveyance from the brother to them, executed during mortal sickness four days before he died, it was held that the only question was, whether, in point of fact, he was in sound mind at the time; and the deed was rejected on failure of proof to this point. Judgment went in favour of the widow as heir to the estate of her husband, revertible at her death to the husband's next heirs.[2]

Radhamunee Dibeh v. *Shamchunder and another.* 27th Sept. 1804. 1 S. D. A. Rep. 85. — II. Colebrooke & Harington.

4. Where a Hindú woman had executed a deed alienating lands, and it appeared that her signature had been obtained by fraud or other undue means; and it was also proved, that very soon after the execution of the deed she had protested against it, as having been fraudulently imposed upon her; it was held that such deed was void, on the ground that the deed was not what the subscribing party had intended, or had agreed to sign; and costs were given against the parties who had obtained possession of the lands under the deed, and they were ordered to account for the profits of the lands during their illegal possession.[3] *Shunkur Dutt Ojha and another* v. *Mt. Sonaen Ojhaen.* July 1806. 1 S. D. A. Rep. 147. — Harington & Fombelle.

5. A *Niyam-patra*, or declaratory deed, executed by a Hindú widow, reciting that she had adopted a son under authority from her husband, and declaring that the estate was to remain with her during her life, and to go to the adopted son at her death, is of no avail in law as regards the widow's claim to retain possession; for immediately on the adoption of a son by the widow, under due authority, the estate to which she succeeded, in default of male issue, becomes the property of the son adopted. *Mt. Solukhna* v. *Ramdolal Pande and others.* 27th May 1811. 1 S. D. A. Rep. 324.—Harington.

5 *a.* But she may hold the estate as trustee for her adopted son, and may carry on a suit in her own name for a partition of the property as the guardian of such son, though the property is vested in him. *Dhurm Das Pandey and others* v. *Mt. Shama*

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[1] 3 Coleb. Dig 576 A widow has no power to alienate land given to her by her husband 2 Macn Princ. II L 123.

[2] 2 Coleb. Dig. 181 *et seq* Macn. Cons. II. L 402. 1 Macn. Princ II L 125, 126. 2 Do. 218, 219 246. It has been laid down as a general principle by Colebrooke, that, "By the Hindu law, a gift or gratuitous contract, made by a person afflicted with an incurable distemper, is void His equanimity being disturbed, he does not possess the self-controul requisite to a valid act and legal disposal of his property." It follows, that, to uphold a gift made on a deathbed, there should be the clearest proof of sound disposing mind, to repel any presumption which might exist to the contrary.—Sir W H Macn.

[3] 1 Macn Princ II L 124

Soondri Dibiah. 8th Dec. 1843. 3 Moore Ind. App. 229.

6. A *Hissah námeh*, or deed of partition, made by a Hindú father, in which he allots to his sons portions of his estate, moveable and immoveable, ancestral and acquired, but which disposition was not carried into effect during his lifetime, is not binding on his sons after his death. *Bhowannychurn Bunhoojea* v. *The heirs of Ramkaunt Bunhoojea.* 27th Dec. 1816. 2 S. D. A. Rep. 202. — Harington.

7. An *Ikrár námeh*, executed by a Hindú in favour of his mother, for her maintenance, on condition of her binding herself not to alienate it, but to leave it to his son on her death, was held not to terminate his right in the soil, or its profits after her death; nor does it then originate such right in his son, because the right vested in the mother by the *Ikrár námeh* only extended to the enjoyment of the profits of the soil, and that during her life, and never to possession of the soil, or to disposal of the profits thereof after her death; and because an *Ikrár námeh*, such as was executed in the present instance, is not one of the modes of alienation of property recognized by the Shastras, and therefore creates no title. *Kumla Kaunt Chuherbutty* v. *Gooroo Govind Chowdree and others.* 20th Jan. 1829. 4 S. D. A. Rep. 322.—Leycester.

II. Muhammadan Law.

1. *Construction and Operation.*

8. Where a Muhammadan granted property by deed to the widow of his late father, who sold it to a third person, the sale was held to be valid (although the deed was not in the regular form of a *Hibeh námeh*), as it contained the words *dádeh shud*, "it was given (by me)." *Moohummud Umeer Khan* v. *Jumadar Bucha Bhaee.* 9th Jan. 1822. 2 Borr. 179. —Romer.

9. A deed of gift, for a consideration *bonâ fide*, executed by a trader to his wife, such trader not being shewn to be in debt at the time, or that he executed it in contemplation of insolvency, is good against subsequent dispositions of the property. Such a deed will, by the Muhammadan law, be construed according to the rules affecting the laws of sale; and the validity of a sale is derived, not from the seizin, but from the contract.[1] *Doe dem. Ramtonoo Mookherjee* v. *Bibee Junut.* 1st Term 1843. 1 Fulton, 152.

2. *Fraudulent and Void.*

10. Semble, A deed, termed a deed of *Bay-bil-wafá*, executed on land for a sum of money, in favour of a person through whom, not from whom, the money was borrowed, is not valid in Muhammadan law.[2] *Beebee Jugun* v. *Bakir Ali and others.* 7th May 1804. 1 S. A. Rep. 78.— II. Colebrooke & Harington.

11. Deeds of release founded on an invalid deed of assignment were held not to be binding. *Mt. Khanum Jan* v. *Mt. Jan Beebee.* 13th Feb. 1827. 4 S. D. A. Rep. 210.—Leycester & Doring.

12. A deed containing a provision contrary to an express ordinance of the Muhammadan law is void and ineffectual under such law. *Muhammud Yakub* v. *Wajid un Nissa.* 28th Jan. 1833. 5 S. D. A. Rep. 262.— Rattray & Walpole.

13. A *Rází námeh* and admission of the plaintiff's claim, executed by her aunt, turning on a deed of her grandfather which had been declared invalid, was held to be inoperative. —*Ib.*

14. *A*, a Musulmán, by a deed,

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[1] Macn. Princ. M. L. 52. par. 15. 167. Case 3. 221. Case 16.

[2] On the subject of sale, with an option of rescission within a limited time, or *Bay-bil-wafá*, considered as a mortgage, which some deem lawful and others not, see 2 Hed. 381.

assigned to his wife *B*, in satisfaction of her dower, whatever *Zamíndárí* properties and personal effects he owned and held. Held, that the quantity of the consideration being undefined and unknown, the deed was inoperative and illegal, so that the dotal obligation remained in force against the husband.[1] *Aiman Bibi* v. *Ibrahim Khan.* 9th May 1833. 5 S. D. A. Rep. 304.—Barwell & Walpole.

III. In the Supreme Courts.

15. Deeds purporting to be final will not be set aside on suggestions of fraud, or of an improper advantage taken; nor will they be construed as having been meant to be provisional only, unless upon strong and unexceptionable evidence. *Shaick Devaljee* v. *Maury Chitty.* 7th Aug. 1809. 2 Str. 23.

16. A deed coming out of the hands of the party who claims an interest under it, after notice to produce it, need not be proved by the subscribing witness. *Kissenchunder Chund* v. *Munnee Raur.* 31st Mar. 1815. East's Notes. Case 33.

17. Where a defendant had pleaded a release, the Court compelled him, on oyer, to furnish the names of the attesting witnesses, as well as the other parts of the deed. *Dhinnomoney Dabee* v. *Muddoosoodun Sandiel.* 11th April 1839. Clarke's Notes, 125.

IV. In the Courts of the Honourable Company

1. *Execution.*

18. The validity of a deed was upheld, to which a surreptitious addition, purporting that it was void, had been made by the subscribing party; it appearing from the evidence of the subscribing witnesses that the latter, at the time of executing the paper, had declared it to be binding as well as voluntary on his part, and that the word declaring it to be void was not observed by them on the paper when they attested it.[2] *Pudum Nath Rai* v. *Ranee Judesree.* 2d May 1806. 1 S. D. A. Rep. 132.—H. Colebrooke & Fombelle.

19. A deed of sale witnessed by only one person, whose interests it materially affected, and wanting the usual requisites of boundaries and indifferent witnesses, was declared to be an informal document, and invalid. *Lar Baee* v. *Ichharam Gopal.* 27th June 1822. 2 Borr. 309.—Romer, Sutherland, & Ironside.

2. *Construction and Operation.*

20. *A* and *B* laid claim to certain landed property in the Hydur Poora. *A*, in support of his title, exhibited a deed of sale, by which he held property in the Hydur and Sulabut Pooras, containing, however, no such minute description as to identify the ground litigated; whereas *B*'s title arose out of a deed of gift granted many years previously by the then Nuwab of Surat to the ancestors of *C*, acknowledged by the adjacent householders; and upon a mortgage bond executed by *C*, and duly registered, by which, as clearly appeared from a description therein of it, the piece of ground was conveyed to *B*, and this bond was authenticated by the seal of *A*'s father, who would not, by such an act, have recognized the title of *C*, had he had any claim to the property. The Court, considering these deeds as valid, decreed, that as the piece of ground in dispute

[1] 3 Hed. 293. Macn. Princ. M. L. 50. par. 6. 199. Case 3.

[2] The artifice practised by the defendant (and appellant), who privately added to his signature a short declaration of the invalidity of the document, did not avail against the evidence of his acknowledgment. His signature to the document was taken by all the Courts in the sense in which it was understood by the other party and witnesses, and in which he gave it to be understood at the time of his affixing it.

was originally transferred in gift by a Nuwab of Surat to the ancestor of *C*, who mortgaged it to *B*, the land should belong to *B*. *Meer Wuleeood-deen Hoossain* v. *Nihalchund Bhaee Shah*. 15th Nov. 1820. 1 Borr. 273. — Hon. M. Elphinstone, Bell, & Prendergast.

21. A deed of sale of a house, whether collusive or not on the part of the vendor, is binding; as, if it were fraudulent, he could not be allowed the benefit of his own wrong. *Rajaram Keshowram* v. *Khoobchund Moolchund*. 6 Feb. 1821. 2 Borr. 13.—Elphinston.

22. Where the date of a certain instrument appeared stated according to the *Samvat* era, as far as regarded the day of the month, whilst the year mentioned was the *Faslí* year, and consequently the English date of the sale of the stamped paper being then ostensibly a day posterior to the engrossment of the instrument, it would therefore be rendered invalid. The Court, seeing reason to presume that the person who engrossed the document intended to insert the *Samvat* instead of the *Faslí* year, and having found that such an alteration would render the dates of the instrument correct; and moreover the evidence of its execution appearing to be satisfactory, declared such instrument to be valid. *Agund Race* v. *Rughoonath Sahyr*. 14th July 1835. 6 S. D. A. Rep. 32.—Rattray.

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3. *Fraudulent and Void.*

23. Where parties had been tried and acquitted in the Court of Circuit of a charge of forging a certain instrument, the Court observed that it did not follow from such acquittal that the deed was genuine; but it appearing, so far as the evidence taken on such trial was before the Court, that the prosecutor had failed to prove the forgery of the deed, and the further evidence subsequently produced in the Civil Court to this point being equally unsatisfactory, the Court decided that the instrument was valid. *Talloory Javikaraudoo* v. *Vassereddy Vencatadry Naid*. Case 7 of 1811. 1 Mad. Dec. 41.—Scott & Greenway.

24. A deed executed by *A*, by which he bound himself to grant to *B* certain land so soon as he, *A*, should succeed to a certain *Zamíndárí* and which deed was sold by *B* to *C*, an European, was held not to be sustainable as a ground for recovering such land by *C*, the Regulations prohibiting a *Zamíndár* from making such a grant, and Europeans being disqualified from holding lands beyond the limits of the jurisdiction of the Supreme Court at Madras without the sanction of the Governor in Council. *Rajah Vencata Permal Rauze* v. *Abbot and another*. Case 16 of 1812. 1 Mad. Dec. 66. —Scott, Greenway & Stratton.

25. A claim to certain villages made by *A* against *B* and the heirs of *C*, was adjudged in favour of *A*, it appearing that the claim of *B* and *C* to the lands in question rested on deeds of sale which were held to be illegal, inasmuch as they were in violation of Sec. 3. of Reg. XXXVIII of 1793, which prohibits Europeans from holding land without the sanction of the Governor-General in Council, and were also not sufficiently distinct to give a title to the villages in question. *Fairlie and others* v. *Maheh Ram Chowdry*. 18th Jan. 1819. 2 S. D. A. Rep. 285.—Blunt.

26. *A*, by a deed of agreement, acknowledged the receipt of a sum of money from *B*, and promised to repay the same. *A* pleaded that *B* had not paid him the money, and a counter deed, by which *B* agreed to perform certain conditions previously to becoming entitled to receive the money; but its execution being denied by some of *A*'s witnesses, and the first deed being confessedly executed, and not taking notice of any counter deed; it was held that *B* was entitled to recover the money on the ori-

ginal agreement; as, if *A* had not received the money, he ought not to have given the acknowledgment; and if he had, at the same time, entered into a counter agreement the conditions should have been specified in the first deed. *Gollapoody Sastriah* v. *Madabooshee Ramanoojacharloo.* Case 12 of 1821. 1 Mad. Dec. 310.—Harris & Gowan.

27. Where a deed had been declared inadmissible by a Zillah decree, from which an appeal was preferred, but subsequently withdrawn by *Rází námeh,* it was held that the production of such decree is not sufficient to preclude inquiry into the authenticity of the deed in a subsequent suit. *Debnath Mujmoondar* v. *Kishenpershaud Goseen.* 14th Jan. 1823. 3 S. D. A. Rep. 200.—Goad & Dorin.

28. *A* sued *B* to recover certain lands which he alleged *B* had relinquished by deed in his favour, in lieu of a monthly stipend of Rs. 50. *B* repelled the action as an attempt to defraud her of her property. The Zillah Judge dismissed the claim on defect of proof. *A* appealed to the Sudder Dewanny Adawlut, which affirmed this decision, because *B* had not been made a party in writing to the deed of relinquishment, the omission of which had rendered it inoperative and void. *Mirza Lateef Hosain* v. *Ozeeroon Nissa Begum and others.* 26th Jan. 1842. 1 Sev. Cases 133.—Dick.

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4. *Registration.*

29. Semble, A registered deed has no priority over a previous unregistered deed, if the vendee of the second knew of such prior deed. *Prannath Chaudhari* v. *Chandramani Devi.* 25th Sept. 1833. 5 S. D. A. Rep. 328.—Braddon.

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5. *Stamps on Deeds.*

30. A *Taksím námeh,* or deed of division, was held to be valid when part only was written on stamped paper, the remainder being on plain paper, unstamped. *Mt. Ladlee* v. *Suyud Ghoolam Shujaut and others.* 8th Mar. 1824. 2 Borr. 479.—Romer, Sutherland, & Ironside.

DEFAMATION.

I. In the Supreme Courts, 1.

II. In the Courts of the Honourable Company.

1. *Generally,* 3.
2. *Publication,* 6.
3. *Action for Defamation,* 7.

I. In the Supreme Courts.

1. It was held that a letter addressed to Government complaining of an alleged grievance, apparently true, and praying redress, and written *bonâ fide,* though containing injurious imputations on the plaintiff which he might not deserve, is not the subject matter of an action, the circumstances rebutting the presumption of malice. *Hayes* v. *Graham.* 29th Jan. 1818. East's Notes. Case 74.

2. A letter in a newspaper imputing dishonourable acts to an individual, extended to him by an *inuendo* only in the declaration, and not pointing out such individual by name, was held to be no libel. *Macnaghten* v. *Dwarkanauth Tagore.* 24th Oct. 1838.—Barwell's Notes, 9.

II. In the Courts of the Honourable Company.

1. *Generally.*

3. Where *A* sued *B* for damages for loss of character, caused by *B*'s living in the same house with *A*'s daughter-in-law, the suit was dismissed, it being proved that *A* had been absent twenty-eight years, and had never seen his daughter-in-law; and, moreover, that it was common in

the Cast of the parties for persons to live together in the same house; consequently *A*, who had proved nothing more, could not have suffered in his reputation. *Roopchund Tilukchund* v. *Phoolchund Dhurmchund and another*. 27th Dec. 1823. 2 Borr. 616.—W. A. Jones.

4. Where an action was brought by a member of a Cast (Dosa Desawa Banyans) for defamation of character by slanderous words, it was held by the Assistant Judge (Prescott) that the defamation was proved, and was, moreover, unfounded; and it was decreed in his favour. This decision was reversed on appeal to the Judge (Grant), who decided that words spoken in a moment of irritation do not affect men's characters, and that the effect of the slander was to exclude him only from a part of, and not the whole of, the Cast. But on appeal to the Sudder Dewanny Adawlut, the Judge's decree was reversed, as the appellant's original suit was on the score of the calumny promulgated against him, and not for restitution to his Cast. The Court therefore held that it was necessary for him to prosecute, in order that it might be proved that an injury had been done him; as, until that was settled, it was impossible to say how far the slanders circulated against him were injurious to his character, and awarded him one rupee damage, carrying with it all costs in all Courts. *Petamber Nuratum* v. *Muhundas Koaber*. 8th May 1832. Sel. Rep. 91.—Ironside, Barnard, Baillie, & Henderson.

5. The Court will not assess or award damages on questionable and conflicting evidence adduced by the plaintiff for alleged defamation of character. *Ram Taruf Sawunt and others* v. *Golaum Alee and others*. 14th Sept. 1842. 7 S. D. A. Rep. 115. 2 Sev. Cases 19.—Reid & Barlow.

5*a*. Damages for defamation are assessable only when the person defamed is of reputed good character, and unblemished reputation. *Ib.*

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2. *Publication.*

6. In an action for defamation of character brought by *A* against *B* (a police officer), for having, in a report to his official superior, made statements against *A*'s character that he, *B*, was not able to substantiate, it was held that a police officer cannot be considered liable for a statement made by him on information that he has cause to believe to be true, although not eventually proved to be so. *Shreenewas Rao* v. *Yeswunth Rao Wittul*. Sel. Rep. 198.—Bell, Giberne, & Pyne.

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3. *Action for Defamation.*

7. A suit cannot be entertained for damages for loss of Cast, caused by an alleged defamatory writing, where no proof exists that such writing had occasioned the loss of Cast, or that it was ever made use of. The Court observed in this case that the writing was in the shape of a deposition before the *Panchâyit* held to inquire into the conduct of the complaining party, and there was great probability that it was drawn up for the use, and with the authority, of the *Panchâyit*, to assist in the investigation, but from accident was never made use of. The suit was therefore dismissed with costs, reversing the decree of the Zillah Judge (Hale.) *Bhuwanee Shunkur* v. *Radha Baee*. 4th April 1824. 2 Borr. 576.—Barnard.

8. An action for damages on account of defamation of an *Avignat Nayr*, who died whilst the suit was pending, cannot be prosecuted by his successor in the office, it not being shewn that the acts complained of by the late *Avignat Nayr* did, in their consequences, survive the deceased, and operate to the successor's own prejudice. *Peratt Namboodry* v. *Pyoormulla Avignat Nayr*. Case 15 of 1824. 1 Mad. Dec. 491.—Grant, Gowan, & Lord.

9. *A* made a charge against *B*, an uncovenanted judicial officer, accusing

him of corruption in the discharge of his official duty. *A* prosecuted the case unsuccessfully from the Zillah to the Sudder Court. *B* afterwards sued *A* for damages for the libel, and the Sudder Dewanny Adawlut confirmed the decree of the lower Court, which awarded to *B* damages to the amount of Rs. 1000. *Bhyrub Chunder Bhose* v. *Thomas.* 4th Aug. 1836. 6 S. D. A. Rep. 97.—Barwell & Braddon (Halhed, dissent.)

10. Where, in an action brought on account of defamation of character, the plea of justification of the libel was not sustained, yet as there were strong suspicions that attached to the conduct of the plaintiff, mitigated damages were allowed, with costs. *Baee Gunga* v. *Sukharam Cristnajee.* 28th Jan. 1840. Sel. Rep. 225.—Marriott & Bell (Greenhill[1], dissent).

11. Held, that words otherwise actionable in themselves as defamatory and libellous, are not so when used in a defence made by a party to a suit in a judicial proceeding. *Hedger* v. *Maha Rani Kamal Kumari*, and *vice versâ.* 22d April 1841. 1 Sev. Cases, 115. 7 S. D. A. Rep. 29.—Warner & D. C. Smyth.

12. A party using opprobrious language in a defence, filed in a Magistrate's Court, may be fined for contempt, under Clause 2. of Sec. 5. of Reg. XII. of 1825[2] *Ib.*

13. In an action for the recovery of damages for defamation, in consequence of the defendants having, in a petition, charged the plaintiff, who was postmaster at Tirhoot, with having clandestinely opened a parcel containing certain papers, the principal Sudder Ameen dismissed the claim, for (as observed by the Court) very unsatisfactory reasons; and the Court reversed the decree, and awarded Rs. 10,000 damages, with costs, against the defendants. *M'Kinnon* v. *Mahomed Tukee Khan and others.* 15th Jan. 1844. 7 S. D. A. Rep. 149.—Rattray, Tucker, & Barlow.

[1] Mr Greenhill considered the act of the defendants justified by the suspicion that the plaintiff had committed the act charged against her by them.

[2] See Constr. 619 parag 2

DEFAULTER. — See Surety, *passim.*

DEFENDANT.— See Assumpsit, 3; Practice, 19. 236. 240.

DEHYAK.

I. When the office of *Tahsildár* was abolished, their fees, viz. *Dehyak* and *Bhuray*, were resumed by the Government. *The Collector of Benares* v. *Baboo Ulruk Sing.* 26th June 1824. 3 S. D. A. Rep. 381.—J. Shakespear, C. Smith, & Martin.

DEMURRER, COSTS OF.—See Costs, 22, 23.

DEOWATTAR. — See Compromise, 2; Land Tenures, 12 *et seq.*

DEPENDENT TALOOKS.—See Land Tenures, 41. 43.

DEPOSIT.

1. Where *A*, one of three brothers, deposited jewels in the hands of *D*, with the knowledge of *B* and *C*, his elder and younger brothers, and for the general interest of the family, and *D* established their restitution to *B*, the eldest brother and head of the family, to the satisfaction of the Court, such restitution was held to be sufficient as against any claim by *A* and *C* for the jewels. Such deposit not having been made separately by each brother on their separate accounts, the restoration of the jewels to any one of the brothers was legal. *Totah*

Rungiah and another v. *Chenchumma and others.* Case 13 of 1824. 1 Mad. Dec. 482.—Grant, Cochrane, & Oliver.

2. It was held that an entry in an account of a sum of money payable to a female on her marriage, and bearing interest in the mean time, is not of the nature of a deposit provided for under Cl. 4. of Sec. 3. of Reg. II. of 1805, but is subject to the ordinary rules of limitation. *Catchick Mackertick* v. *Aratoon Harapiet Aratoon.* 15th May 1844. 7 S. D. A. Rep. 161.—Gordon.

DEWAN.—See AGENT AND PRINCIPAL, *passim.*

DEWANNY GRANT.—See LAND TENURES, 5. 22.—PENSION, 1.

DHURNA.—See CRIMINAL LAW, 188.

DISTRESS.

1. *A* distrained *B*'s house for arrears of revenue, and caused it to be pulled down and sold. Held, that such distraint and sale were illegal, as, under the provisions of Sec. 2. of Reg. XXVIII. of 1802, *real property* is exempted from distraint and sale for arrears of rent and revenue; and according to the provisions of the above Regulation, *A* was adjudged to reimburse *B* the value of the property so disposed of. *Puchyandy Naik* v. *Sungaralinga Camy Naik and others.* Case 9 of 1823. 1 Mad. Dec. 418.—Ogilvie & Grant.

DIVORCE.—See HUSBAND AND WIFE, 13 *et seq.* 45, 87.

DIYAT.—See CRIMINAL LAW, 50, 51. 303. 345. 352. 357. 387. 396, 397, 398. 400. 437. 557.

DOWER.—See HUSBAND AND WIFE, 16 *et seq.* 46 *et seq.*

DUEL.—See CRIMINAL LAW, 189 *et seq.*

DUES AND DUTIES.

1. The proprietary dues levied on iron ore, manufactured, do not necessarily belong to the proprietor of the soil, if it should have been the usage to consider such property as distinct from the soil. *Gooroopershad Bose and others* v. *Bisnoochurn Heyra.* 31st July 1811. 1 S. D. A. Rep. 337.—Harington & Stuart.

2. A *Zamindár* had been in the habit of making collections on account of lands held by his farmers previously to and after the permanent settlement. The latter claimed exemption, alleging the lands to be *Lákhiráj*, and averring that the collections had been made by force; but as this averment was not supported by evidence, and no documents were produced to prove the exemption of the lands from revenue, the Court held that the defendants had failed in establishing their title to the exemption which they claimed. *Rajah C. Venkatadry Gopal Jugganadha Rao* v. *Khajah Shumsooddeen and another.* Case 16 of 1817. 1 Mad. Dec. 179.—Scott & Greenway.

3. *A* claimed a right to demand a fee upon every *Bighá* of land watered from a certain well belonging to him. *B* denied that *A* had any proprietary right in the well; but it being deduced from the evidence that the well was calculated to water sixty *Bighás* of the surrounding land, out of which *B* possessed thirty-five and a half, which he had accordingly watered from this well, free from all imposts in the shape of fees, but subject to charges in that proportion for its repairs; that *A* held one and a half *Bighá*, and no more, but that he had been in the habit of receiving a fee

for irrigation of one rupee per *Bighá* upon the remaining number of *Bighás* belonging to other persons. It was held that *A* was entitled to levy a fee for every *Bighá* beyond thirty-five and a-half, the quantity belonging to *B*, watered from the well in dispute, the expense of its repairs being defrayed in equal proportions by the sharers in it. *Narayundas Soorjee* v. *Patel Kaleedas Wusundas and others.* 8th April 1819. 1 Borr. 422.—Elphinston, Romer, & Sutherland.

4. A claim by the appellants to the privilege of levying duties on *Golahs*, erected by *Baipáris* on the lands of a third person, was disallowed, all such exclusive privileges having been put a stop to by the abolition of the *Sayer* duties. *Mt. Dooleh Dibia and another* v. *Raja Oodwunt Sing and another.* 29th June 1819. 2 S. D. A. Rep. 303.—Leycester.

5. A *Thakoor* refusing to pay a triennial *Péshkash* to the East-India Company, on the ground that the exaction of it by the late Government of the country was an act of oppression, was compelled to pay it, together with the costs of the suit, on proof being adduced of payment of the *Péshkash* to the former Government. *Rana Ubhee Singh Raja* v. *The Collector of Broach.* 14th Feb. 1821. 2 Borr. 44.— Elphinston.

6. A claim by a *Patél* for a *Hakk*, or fee, annually from each fishing-boat in the village was dismissed, on proof that the *Hakk* belonged to the Government and not to the *Patél*. *Bapoojee Rughoonath* v. *Sinwar Kana and others.* 19th Aug. 1822. 2 Borr. 342.—Barnard.

7. Where a farmer of a village claimed a government fee upon exports by the villagers, he was nonsuited for want of proof of the existence of the fee. *Hurjeevun Poonjiya* v. *Kesoor Sugal and others.* 26th March 1823. 2 Borr. 494.—Romer.

8. By the Hindú law, as current in Behar, the profits arising from sacrificial fees are not fit subjects of transfer. *Nundram and others* v. *Kashee Pande and others.* 30th June 1823. 3 S. D. A. Rep. 232.—Leycester & Dorin.

9. It was held, that, since the permanent settlement, a claim for *Mukaddamí*, *Chaudhraí*, or *Chakladárí* dues will not lie against any *Zamíndár*. *Kulian Chowdhree* v. *Raja Ikbal Ali.* 19th Feb. 1827. 4 S. D. A. Rep. 215.—Leycester & Dorin.

10. It was held, that when cattle or goods arrive from the interior at any of the bunders, for the purpose of crossing the narrow channel from the mainland to Salsette, the duties taken, and all matters connected therewith, can only be considered as transit duties, the same as taken on droves of cattle or merchandize passing any river in the interior; nor can they be seized under the provisions of Reg. XX. of 1827,[1] as it would be absurd to apply to a mere ferry the rules of a sea custom-house. *Wittoba Dewjee* v. *Syed Boodun and others.* 6th July 1830. Sel. Rep. 35.

11. Cattle drovers having paid the transit duty were held to be at liberty to use any ferry from the mainland to Salsette, it not being proved that, either under the former or the Company's government, there was any custom, order, or law whatever setting forth that particular ferries or ports should be used. *Ib.*

12. Where a *Zamíndár* had paid certain allowances to *Gosayens*, the payment of which had never been confirmed by the Revenue Authorities on a sale of the *Zamíndárí* for arrears of revenue; it was held, that though the former *Zamíndár* might have paid such allowance, being competent to concede to the *Gosayens* what they levied by a title, good or bad; and though, by such concession, the *Gosayens* might have derived a right whilst the conceder's right existed; yet, as the *Zamíndárí* right is extinguished

[1] This Regulation is nearly all rescinded by Acts I. & XIX of 1838.

by the sale, the auction purchaser has a right to receive all the *Zamíndárí* dues. *Radha Gobind Singh* v. *Gorachandra Gosain.* 15th April 1833. 5 S. D. A. Rep. 290.—Hulhed.

13. A claim by a *Kází* to fees for the solemnization of a marriage was dismissed, as being repugnant to the provisions of Sec. 8. of Reg. XXXIX. of 1793. *Zenutoollah Cazee* v. *Nujeeboollah and others.* 6th July 1835. 6 S. D. A. Rep. 31. —Stockwell.

14. A suit having been brought for the amount of one year's *Moghulái*, or government dues, and amended by claiming, under Sec. 3. of Chap. 2. of Reg. IV. of 1827 of the Bombay Code, ten years' dues, was held by the Judicial Committee of the Privy Council to be a suit for the title to the dues, as well as for the dues themselves. *Bomanjee Muncher-jee* v. *Syud Hoossain Abd-oollah.* 7th Dec. 1837. 1 Moore Ind. App. 494.

15. In order to entitle persons in possession of the offices of *Majmúahdár*, *Pareh*, and *Mehta*, in the Bombay Presidency, to the fees incident to such offices, it is not essential that the duties of the offices should have been performed by the persons so possessed, if they were prepared to discharge such duties when required. *Beema Shunkur* v. *Jamasjee Shaporjee and others.* 9th Dec. 1837. 2 Moore Ind. App. 23.

16. In a suit, however, for the recovery of the fees, such claim is limited, by Sec. 4. of Reg. V. of 1827 of the Bombay Code, to a period of twelve years.—*Ib.*

17. Where *A* and *B* sued *C* to recover from him the amount of a certain tax called *Karní*, due for two years, which they had asserted they had paid to Government on *C*'s account, also for their *Sukrí* fees due to them as *Patéls* for the same period, *C* resisted the claim, by alleging that they had paid the amount to Government in part payment of a debt they owed him. It was held that *A* and *B* had no authority to sue at all for dues belonging to Government, which, moreover, it appeared had never been paid by them for *C*, and the claim for the *Karní* tax was therefore thrown out; but as the *Sukrí* was a personal claim, it was agreed that a decree should be given for it, with costs in proportion. *Girdhur Gawinahat and another* v. *Sorabsha Taleyarkhan.* 1837. Sel. Rep. 193. —Bell, Pyne, & Greenhill.

18. Where a person brought an action against the Collector of Customs for the recovery of the value of certain *Hakks*, disallowed by the Collector on the ground that the transit duties, having been abolished by Reg. IV. of 1834,[1] all *Hakks* dependent thereon must cease; it was held that, by Act XX. of 1839, the authority of the Government was required, by means of a proclamation, before the rights of individual *Hakkdárs* could be interfered with, and the Collector was declared liable for the amount claimed. *Pelly* v. *Nusserwanjee Pestonjee.* 13th Feb. 1840. Sel. Rep. 231.—Marriott & Greenhill.

19. Where a suit was brought to recover certain *Hakks* due on the occasion of a marriage, it was held that it was optional with the parties, at the time of the marriage, to adopt all or any of the ceremonies enumerated, and for which *Hakks* were due; but that *Hakks* were recoverable for those ceremonies admitted to have been performed. *Pandoorung Succaram* v. *Balumbhut.* 6th Feb. 1839. Sel. Rep. 174.—Pyne, Greenhill, & Le Geyt.

20. Where a person claimed exemption, to a certain extent, from Customs in right of *Shetí Watan*, and sued for the recovery of *Grám* detained by the farmer of the Customs in satisfaction of alleged duties claimable thereon, it was held that the privileges of *Shetís* varied according to local usage, and that the plain-

[1] Rescinded by Act I. of 1838.

tiff's claim being greatly in excess of what he could establish as his right, judgment was given for the defendant with costs. *Bussapa Bussup Shetee* v. *Ragupa Bingairee*. 10th Sept. 1839. Sel. Rep. 214.—Giberne, Pyne, & Greenhill.

DUMBÁLAH.

1. Holders of lands, partly or wholly exempted, in the villages throughout the country, have never, from time immemorial, taken away their produce without a *Dumbálah*, or permission. The object of this prohibition was to secure the Government, the *Zamíndárs*, and the renters, from being defrauded of a portion of their taxes on the partly exempted lands, and of their produce, or revenue on the *Málguzárí* lands, lying contiguous. *Vencata Narsimha Naidoo and another* v. *Panoomurtee Letchemputy Shastrooloo*. Case 2 of 1819. 1 Mad. Dec. 219.—Harris & Cherry.

2. *Dumbálahs*, or permissions to reap, should be granted by the sub-renters: the issue of a *Dumbálah* by a *Zamíndár*, or head-renter, is supererogatory; and a sub-renter, by withholding the permission, was decided to have withheld the produce, and to be liable to refund the value of such produce, the head-renter not being liable. *Ib.*

DURESS.

I. Generally, 1.
II. Proof of—See Evidence, 79 *a*.

I. Generally.

1. Damages were awarded to a debtor, where his creditor had stopped him on the high road and subjected him to duress. *Behchur Joita* v. *Jeta Jeevun*. 23d March 1819. 1 Borr. 436.—Romer & Sutherland.

2. It appearing that an account, which was the sole evidence against a surety, was signed by his principal while under unlawful restraint; it was held that such account, so obtained, was of no effect to bind the principal, and much less his surety. *Condaswamy Moodely* v. *McLeod*. Case 7 of 1826. 1 Mad. Dec. 552.—Grant, Cochrane, & Oliver.

DURPUTNÍDÁR.—See Land Tenures, 27 *et seq.*

DWYÁMUSHYÁYANÁ. — See Adoption, 40. 45. 73, note.

EAST-INDIA COMPANY.

1. It seems doubtful whether the East-India Company are grantees, under the Charter, of the property of intestates leaving no next of kin. *In the matter of Captain Nanny Wynne*. 20th Aug. 1802. 1 Str. 165.

2. Per Grey, C. J.—The East-India Company can be sued on bills of exchange and promissory notes although they are a Corporation. Nor will they be exempt from being sued even as to matters of Government. *Bank of Bengal* v. *The East-India Company*. 17th Jan. 1831. Bignell, 118.

3. *Quære*, Whether the East-India Company are liable for the securities for the territorial debt; and whether such securities are not contracts, on behalf of the Sovereign, for which the agents are not responsible? *Ib.*

4. Per Grey, C. J.—There is nothing in the statutes that can afford any inference that the East-India Company are not to be liable as principals for the payment of the interest on promissory notes for the territorial debt. *Ib.*

5. Per Grey, C. J.—It may be presumed that the Company intended to render themselves responsible, as principals, to pay promissory notes for the territorial debt; 1st, Because the Board of Commissioners cannot

interfere in the matter; 2dly, Because, on the authority of *Davis* v. *The Bank of England*, it is doubtful whether an action on the case would lie against them at all events; and, 3dly, Because the form of the notes might lead parties to believe that the Company intended to render themselves liable. *Ib.*

6. Per Grey, C. J.—The Company have no right to pay a forged note out of the revenue. *Ib.*

EJECTMENT.

I. For what it lies, 1.
II. Lessor's Title, 4.
III. Between Landlord and Tenant, 14.
IV. Declaration, 15.
V. Proceedings in, 16.
VI. Costs in.—See Costs, 24.

I. For what it lies.

1. Lands occupied by persons not subject to the jurisdiction of the Supreme Court, but the rents of which are collected by a British subject, were held subject to the jurisdiction for the purpose of bringing the ejectment.[1] *Doe dem. Colvin* v. *Ramsay*. Mor. 148.

2. Ejectment will lie for lands out of Calcutta, being the property of a native inhabitant of Calcutta, if defence be taken for them.[2] *Doe dem. Bampton* v. *Petumber Mullick*. 29th Oct. 1830. Sm. R. 84. Bignell, 24. Mor. 400.

3. An heir-at-law, proving himself to be such, and establishing the possession and title of his ancestor, will recover land in an action of ejectment.[3] *Doe dem. Gaspar* v. *Doss*, cited in 1 Moore Ind. App. 344.

II. Lessor's Title.

4. The demise in an ejectment must be laid in the name of the person in whose name the *Potta* appears to be made out, even if it be *Benámí*. *Doe dem. Tilluck Seal* v. *Gour Hurry Day*. Hyde's Notes. 30th March 1778. Sm. R. 74. Mor. 249.

5. The demise in an ejectment may be laid in the name of a single member of a joint Hindú family, in whose name alone the *Potta* has been made out; and he, though the second of several sons, having got such *Potta*, it must be understood to operate as completing a title which no person could impeach but his brothers, and to be a good title against all persons excepting them. *Doe dem. Nundoo Bysack* v. *Souchy Raur*. Hyde's Notes. 29th July 1778. Sm. R. 75. Mor. 251.

6. *Primâ facie* title being shewn by the lessor of the plaintiff, it will not be sufficient, in answer for the defendant, to state his title to be a grant from the Honourable Company without *Potta*. *Doe dem. Huzzooree Mull and others* v. *Cossinauth*. Hyde's Notes. 16th Jan. 1779. Sm. R. 76. Mor. 252.

7. A *Potta* dated subsequently to the sale under which the lessor of the plaintiff claims will be held to have relation back to the time of sale. *Doe dem. Goculchund Mitter* v. *Indronarain Paul*. Hyde's Notes. 5th Feb. 1799. Sm. R. 76. Mor. 252.

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[1] *Quære*, According to the present rule, the plaintiff certainly could not have had judgment against the casual ejector, because the question would be, whether the party "in the *actual occupation*" of the lands was subject to the jurisdiction? The present rule, too, is an extension, not a restriction of the old rule; for by the latter the affidavit was required to state (when the lands were not in Calcutta) that they were "in the *actual possession* of a *British subject*."—Mor.

[2] Now, by the recent rule the action would lie, whether defence were taken or not, if the occupant were a person subject to the jurisdiction by inhabitancy or otherwise.—Mor.

[3] In this case the heir-at-law was an American

8. Where, on evidence, it appeared there were five joint tenants, and the demise was alleged by one only, there was a nonsuit, with costs. *Doe dem. Prawnnaut Tewarry* v. *Choitun Seal.* 20th Dec. 1799. Sm. R. 76.

9. The possession of one member of a joint Hindú family is the possession of all; and, in ejectment, the demise must be laid in the names of all. *Doe dem. Ramnaut Seal* v. *Bulram Chunder.* Hyde's Notes. 6th July 1780. Sm. R. 76. Mor. 80.

10. *Quære*, Whether one member of an undivided Hindú family can maintain an action of ejectment against another?[1] *Doe dem. Conformah* v. *Conformah.* Hyde's Notes. 22d Nov. 1780. Mor. 81, note.

11. The members of a joint and undivided Hindú family may make a partition of their land while they are out of possession, and then bring ejectment either jointly for the whole, or severally for their shares. *Doe dem. Choyton Churn Seat and another* v. *Joynarain Ghosal.* Hyde's Notes.[2] 11th Jan. 1782. Sm. R. 77. Mor. 81.

12. Where it appears, in evidence, that the lessor of the plaintiff is the wife of the defendant (the parties being Hindús or Muhammadans), it is no ground of nonsuit that it does not appear, by the plaint, that the parties are Hindús or Muhammadans, and that such an action may be maintained by their law. *Doe dem. Sree Oodoy Conver* v. *Mohun Lall Bussey.* Chamb. Notes. 1st Dec. 1790. Mor. 82.

13. Where a Hindú purchased an estate in another's name, and permitted that other to hold the title-deeds for eighteen years, so as to give him an ostensible title to the world; it was held, that a purchaser under him might maintain ejectment for the premises, notwithstanding the possession and receipt of rents had been continually in the family of the real owner since the original purchase. *Doe dem. Goroopershad Sookool* v. *Gourmonee Dossee.* January 1815. East's Notes. Case 15.

III. Between Landlord and Tenant.

14. A landlord may come in and defend on a petition signed by his *Gumáshtah*, the landlord being absent. *Doe dem. Hunnah Bibee* v. *Cagual.* 15th Nov. 1821. Cl. R. 1829. 211.

IV. Declaration.

15. Where a defendant, in an action of ejectment, had entered into the common rule to confess lease and entry and ouster, the Court, at trial, would not allow her to shew herself out of possession of the premises sought to be recovered, evidence having been given, by the lessor of the plaintiff, that, five days previous to the filing of the plaint in ejectment, the defendant had been actually put into possession of the premises under a writ of *hab. fac. poss.*, which she had obtained under judgment in a former action in the Supreme Court.[3]

[1] If the same rule be to be applied in the case of joint members of a Hindú family as in cases of joint tenants and tenants in common, it should seem that one member may bring an action against another where there has been an actual *ouster*, but not otherwise.—Mor.

[2] The circumstances of this case are not fully stated in the learned Judge's note; but it seems that there were *several* members of the Seat family; that they made a partition of the land among themselves while they were *out of possession;* and that the ejectment was then brought by *two* of the family only for their shares, against the party who had evicted them before the partition. Impey, C. J., in giving judgment, remarked that this decision determined nothing about Hindú brothers, the members of a joint and undivided family, being obliged to join in the demise or not, in ordinary cases of suing for their land.—Mor.

[3] The Court, notwithstanding this opinion, did not disallow the general rule, that it is part of the plaintiff's case, which he has to make out at trial in ejectment, that the defendant was in possession or oc-

Doe dem. Harrobeebee v. *Shurfonessa.* Jan. 1815. East's Notes. Case 13.

V. Proceedings in.

16. Where a rule *nisi* had been obtained for the defendant, that judgment of *non pros.* might be entered up against the lessor of the plaintiff, the Court said, "The 65th rule on the plea side does not relate to actions of ejectment; we must observe the practice in England." *Doe dem. Bolaki Sing* v. *Robertson.* Chamb. Notes. 10th July 1797. Sm. R. 83.

17. The defendant not appearing, at the trial, to confess lease entry and ouster, the Court held that the plaintiff need not go into proof of his case, but that the defendant should be called to confess lease, entry, and ouster; and, on his not appearing, that the lessor of the plaintiff must be nonsuited; and that, upon the cause of nonsuit being entered on the record, he would be entitled to his judgment against the casual ejector. *Doe dem. Tassooduck Hussan* v. *Ramtonoo Dutt; and Doe dem. Orme* v. *Broders and others.*[1] 7th July 1801. Lewin's Notes. Sm. R. 83.

18. But the defendant having entered into the common rule for part of the premises, and pleaded, issue was joined, and the cause came on for trial. No one appeared on the part of the defendant. The Court ordered the petition and the identity of the land to be proved, and gave judgment for the plaintiff; and signified that this should be taken as a precedent for such cases in future. *Doe dem. Anundo Raur and another* v. *Ramdhone Chuckerbutty.* 27th Oct. 1806.—Lewin's Notes, Sm. R. 83.

19. Where a person, on entering into the common rule, had been admitted to defend in the room of the casual ejector, and the lessor of the plaintiff had omitted to file a new plaint against such person, the lessor of the plaintiff was nonsuited. *Doe dem. Bolaki Sing* v. *Robertson.* Chamb. Notes. 10th July 1797. Sm. R. 242.

20. A rule to set aside proceedings in ejectment, on the suggestion of the premises belonging to a native sovereign, was refused. *Doe dem. Sultan Boody Begum* v. *Soobaroy Pillay and another.* 3d Feb. 1806. 1 Str. 219.

21. The person in whose name a *Benámí* conveyance stands, can maintain ejectment for the premises contained in such conveyance. *Doe dem. Degumber Dutt and others* v. *Cossinauth Shaw.* 13th April 1844. 1 Fulton 452.

22. Semble, Even against the beneficial owner. *Ib.*

23. In an ejectment for a *Mirásí* village, the lessors of the plaintiff were nonsuited for want of proof of possession in the defendants. *Doe dem. Mootoopermall and others* v. *Tondaven and others.* 26th Sept. 1808. 1 Str. 300.

24. The tenant in possession being absent at Madras, and notice being served upon the premises, then in the occupation of his servants, his *Gumáshtah*, or agent, applied, by petition, to enter into the common rule; but he not being able to produce written authority, the application was refused. The proceedings were, however, stayed until next term, upon an affidavit of the tenant's absence, that the agent might, in the meantime, get written powers to constitute him the agent, and that the tenant might come in himself. *Doe dem. Jebon Kistno Bysack* v. *Hedger.* 15th Jan. 1810. Sm. R. 45.

25. The word "forthwith" in the 29th plea rule was held to mean four

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cupation of the premises in question at the time the action was brought.

[1] But the next morning the Court mentioned that these cases were irregularly disposed of under the words of the rule of the Court N. B On further consideration, the Court thought that the particular rule did not apply to these cases · the judgments, therefore, stood as given, and on the same day, in another ejectment case, Mr. Lewin proceeded in this manner.

days after the return of the summons. *Doe dem. Cocheel Mitter* v. *Hedger.* 21st June 1815. *Ramnarain Doss* v. *Preston.* 3d Feb. 1823. Cl. R. 1829. 211.[1]

26. In a plaint in ejectment, premises being described as situated in a certain place, and it coming out, on proof, that they were situated elsewhere, the variance was held to be fatal, and the plaintiff was nonsuited. *Doe dem. Zoolphuar* v. *Mirza Jaffier Ally.* 1st Term 1828. Sm. R. 118. Cl. Ad. R. 1829. 46.

27. Dictum of Ryan, C. J.: "In plaints in ejectment there need be but one warrant to sue, and that from such lessor of the plaintiff as may have really undertaken to be responsible for the costs of the action; and he may insert as many counts on demises in the names of different parties as he may think proper." *Doe dem. Shearman* v. *Preston.* 19th June 1837. Mor. 286.

28. Plea rule 5th, Trial and Judgment,[2] does not authorise the granting an immediate writ of possession in ejectment. The last plea rule[3] does not apply, as it refers only to matters of mere practice. *Doe dem. Eyaum Bux* v. *Hilder.* 15th Feb. 1839. Mor. 293.

29. In ejectment, the defendant not appearing, judgment may pass for the plaintiff, even though the lessor of the plaintiff be dead. *Doe dem. Woodakissen Bysack* v. *Radakissen Bysack.* 19th June 1842. 1 Fulton, 19.

EMBANKMENT.

1. Where *A* repaired an embankment, whereby the land of *B* was laid under water, and it appeared that the embankment was not in existence at the time when the parties purchased their estates, it was decreed that the embankment should be broken down, and that *B* was entitled to the damages he sued for, incurred by the flooding of his land. *Abeh Nundee Mustoofee* v. *Doorga Doss.* 15th Jan. 1825. 4 S. D. A. Rep. 8.—C. Smith & Martin.

2. The removal of an embankment having been ordered by a decree of the Court, was held to be sufficient authority to prevent the erection, on another spot, of an embankment having the same effect. *Roop Chunder Kupalee and others* v. *Mahomed Usghuree.* 2d Feb. 1841. S. D. A. Sum. Cases 2.—Reid.

EMBARGO.—See SHIP, 8.

EMBEZZLEMENT & FRAUD.—See CRIMINAL LAW, 193 *et seq.*; FINES, 6; SURETY, *passim.*

ENDOWMENT.—See RELIGIOUS ENDOWMENT, *passim.*

ENTRIES.—See EVIDENCE, 58. 126.

EQUITABLE CHARGE.

1. A legacy of 12,000 star pagodas reserved by a testator from his estate, and devised in favour of his great-granddaughter, having, in pursuance of the directions contained in the will, been put in strict settlement by the executors, and subsequently secured by a mortgage of the real estate of the testator to a trustee of the settlement, was held to be an equitable charge upon the whole of the real estate of the testator; and there being no evidence of such charge having been paid off, the sale of a portion by the Sheriff of Madras under a writ of execution was declared

[1] In each case the judgment entered against the casual ejector, before the expiration of the four days, was set aside with costs. By the present rules (1st Ejectment R. 2 Sm. & Ry. 93.) the tenant in possession is allowed eight days, after service of the plaint and notice, in case the lands lie in Calcutta, or within ten miles thereof, and in case the lands lie at a greater distance, such time is allowed as the Court may direct.

[2] 2 Sm. & Ry. 89.

[3] 2 Sm & Ry. 106

to be invalid. *Lazar* v. *Colla Ragava Chitty*. 3d Dec. 1838. 2 Moore Ind. App. 83.

EQUITY OF REDEMPTION.—See MORTGAGES, 8 *et seq.*; 33, 34. 87 *et seq.*

ERRONEOUS HOMICIDE. — See CRIMINAL LAW, 202 *et seq.*

ESCHEAT.

1. Goods, the property of a *felo de se*, forfeited to the Crown, were ordered by the Court to be delivered over to the East-India Company as grantees. But it appears doubtful whether an escheat of this nature passes to the Company under that part of the Charter which grants to it fines, amendments, forfeitures, &c. *In the matter of Govindo Lala*. 10th Aug. 1801. 1 Str. 74.

2. A Portuguese, a British subject, dying and leaving no heirs, by the English law his estate was decreed to revert to Government, by whom it had been originally granted to the father of the deceased.[1] *Joanna Fernandez* v. *De Silva and another*. 12th Feb. 1817. 2 S. D. A. Rep. 227.—Harington & Fombelle.

ESTATE.

I. GENERALLY, 1.

II. ANCESTRAL.—See ANCESTRAL ESTATE, *passim*.

III. UNDIVIDED. — See PARTITION, *passim*; UNDIVIDED HINDÚ FAMILY, *passim*.

IV. DESCENT OF ESTATES.—See INHERITANCE, *passim*.

V. CONVEYANCE BY DEED.—See DEED, *passim*.

VI. CONVEYANCE BY DEVISE. — See WILL, *passim*.

VII. PARTITION OF. — See PARTITION, *passim*.

VIII. REAL ESTATE. — See REAL PROPERTY, *passim*.

I. GENERALLY.

1. The fact of a person being a sharer in an estate before it is sold is no ground for granting him a share in it after it is re-purchased. *Birja Sahee and others* v. *Roopun Sahee and others*. 16th Jan. 1826. 4 S. D. A. Rep. 99.—Leycester & Dorin.

2. In a claim for possession of a piece of ground by *A* and *B*, on which *C* had erected a building (subsequently to the conveyance to *A* and *B*), *A* and *B* not shewing that the person who sold to them originally had any title to it, they were nonsuited, with costs. *Hurjeevun Jadow and another* v. *Ramshunkur Rajaram*. 8th Feb. 1839. Sel. Rep. 181.—Pyne, Greenhill, & Le Geyt.

ESTOPPEL.

1. A widow of a Musulmán claimed the estate of her husband, who died twenty-six years before, under a gift from him in lieu of dower. There had been no possession on her part since his death; and her son, in the interval, by her directions, had sued and obtained judgment as heir to his father's estate. Such having been the case, it was held that the widow was estopped from claiming under the gift, though she might come in, as one of the heirs, for her share. *Meer Nujeeb Ullah* v. *Mt. Kuseema*. 18th Nov. 1795. 1 S. D. A. Rep. 10.—Sir J. Shore, Speke, & Cowper.

2. The widow of a Musulmán alleged a deed of gift of the landed

[1] Had the case been decided according to the Portuguese law the result would have been the same, as, by the law termed *Mental*, all grants made by the Crown, and subgrants by any great donees of the Crown, become Escheats, on failure of the legitimate descendants of the original donee, relations not in the direct line being excluded.

estate of her husband, in a suit by the heirs against the alleged donee. The deed was set aside as a fabrication; and afterwards, on her suing for lands in satisfaction of dower, her claim was declared by the law officers to be barred by estoppel, because she, by her allegation of gift, had virtually declared that the lands were not the estate left by her husband, and could not claim them as being so.[1] *Bebee Munman* v. *Meer Nusrub Ali.* 6th June 1803. 1 S. D. A. Rep. 64.—H. Colebrooke & Harington.

3. A person pleaded a will, and that being rejected as a forgery, afterwards pleaded a gift, which she had formerly denied. It was held that such plea was estopped by repugnancy (*Tanákuz*) in Muhammadan law. *Bhanoo Bebee* v. *Emaum Buksh.* 5th Aug. 1803. 1 S. D. A. Rep. 68.—H. Colebrooke & Harington.

4. A plaintiff having denied that the defendant was a daughter of the deceased proprietor, and, on her death, having admitted it, and claimed the estate as her heir, such claim is estopped in Muhammadan law, on the ground of *Tanákuz*, or repugnancy. *Shah Abadee* v. *Shah Ali Nukee.*—12th Oct. 1803. 1 S. D. A. Rep. 73.—H. Colebrooke & Harington.

5. Where the plaintiff, a Hindú woman, first denied her conversion to Muhammadanism, but subsequently claimed the property of a deceased Musulmán, as his widow and heir-at-law, it was held that, by reason of repugnancy in her statements, her claim was estopped under the Muhammadan law. *Mt. Chootun* v. *Ramzan Allee and another.* 15th March 1841. 7 S. D. A. Rep. 20.—Barlow.

[1] The Court doubted the application of this doctrine to the case, but dismissed the widow's suit, on the presumption, from her declaration of the gift, that she must have remitted dower, which, besides, had been pleaded by the defendant

EVIDENCE.

I. Hindú Law.
1. *Generally*, 1.
2. *Presumptions*, 6.
3. *Evidence of Partition.—See* Partition, 39 *et seq.*

II. Muhammadan Law.
1. *Generally*, 11.
2. *Presumptions*, 14.

III. Sikh Law, 21 *a.*

IV. In the Supreme Courts.
1. *Generally*, 22.
2. *Presumptions*, 29.
3. *Attendance of Witnesses*, 30.
4. *Examination of Witnesses*, 38.
5. *Documentary Evidence*, 55.
(*a*) *Judicial Documents*, 55.
(*b*) *Accounts & Entries*, 58.
(*c*) *Production of Documents*, 59.
(*d*) *Translated Documents*, 63.
(*e*) *Untranslated Documents*, 65.
(*f*) *Other Documents*, 71.
6. *Secondary Evidence*, 76.
7. *In Criminal Cases.—See* Criminal Law, 8. 10*a*, 11, 12. 15.

V. In the Courts of the Honourable Company, 78.
1. *Generally*, 78.
2. *Admissions*, 84 *a.*
3. *Presumptions*, 86.
4. *Attendance of Witnesses*, 101.
5. *Examination of Witnesses*, 102.
6. *Documentary Evidence*, 115.
(*a*) *Judicial Documents*, 115.
(*b*) *Admission and Proof of Deeds*, 117.
(*c*) *Accounts and Entries*, 126.
(*d*) *Other Documents*, 135.
7. *Secondary Evidence*, 153.
8. *Evidence in Appeals*, 163.
9. *In Criminal Cases.—See* Criminal Law, 207 *et seq.*

I. Hindú Law.[1]

1. *Generally.*

1. Parol evidence that the widow of a Hindú dying without issue had relinquished her right to her deceased husband's estate was held to be inadmissible. *Radhachurn Rai* v. *Kishenchund Rai and another.* 25th Feb. 1801. 1 S. D. A. Rep. 33.—Speke.

2. The evidence of a member of a Cast is not admissible in a claim against that Cast; nor can the evidence of one person of another Cast be admitted to prove the evidence of that member. *Shumbhoodas Raeechund* v. *Dhoolubh Poorshotum.* 1st Sept. 1808. 1 Borr. 347.—Grant & J. Smith.

3. The evidence of a partner of a member of a Cast was held to be inadmissible, unless both parties agreed to abide by it. *Ib.*

4. A leper, under the disorder, is considered as afflicted by the judgment of God, and is incapacitated from giving testimony.[2] The Court remarked, that they did not consider themselves bound to reject a witness as incompetent on the grounds of his being afflicted with leprosy; but thought that it was, at any rate, sufficient to preclude the necessity of the witness giving an answer to the question as to whether or not he was a leper, put in order to vilify him and debase him in the eyes of his countrymen, and the witness was told that he was not bound to answer the question. *Bycauntnauth Paul Chowdry* v. *Cossinauth Paul Chowdry.* 19th March 1816. East's Notes, Case 48.

5. Where a Hindú made a disposition of his property by writing, and also verbally, if such be contradictory the writing will prevail, as being more certain evidence of the testator's disposition. *Sree Muttee Berjessory Dossee* v. *Ramcomny Dutt.* 26th July 1816. East's Notes, Case 54.

2. *Presumptions.*

6. The evidence of witnesses to the fact of an adoption being contradictory, and not supported by circumstantial proof; and the person claiming to have been adopted not appearing, in a public document, to have been designated as the son of his alleged adoptive father; the presumption will be that the claim is unfounded. *Mt. Sabitreea Daee* v. *Sutur Ghun Sutputtee.* 4th Aug. 1812. 2 S. D. A. Rep. 21.—Harington & Fombelle.

7. In no case will evidence of adoption be allowed unless it be free from all suspicion of fraud, and so consistent and probable as to give no occasion for doubt of its truth. *Sootrugun Sutputty* v. *Sabitra Dye.* 9th April 1834. 2 Knapp, 287.

8. Where *A*, a Hindú, absented himself from his home and family, and was not heard of more, his wife (before twelve years had elapsed, so as to furnish a legal presumption of his death) joined with the grandson by a daughter deceased, and next heir, in a conveyance, reciting the death of *A*, and conveying the property to a purchaser for a valuable consideration. It was held, in an ejectment brought by such grandson, and next heir, after twelve years, that his recital of *A's* death should be taken as presumptive evidence against him that *A* was dead when he conveyed, and that he could not recover against conflicting evidence, not balancing in his favour, that he was under age at the time of his joining in such conveyance and recital of the fact of *A's* death, especially as there was also reasonable evidence of a

[1] The Hindú law of Evidence, though not expressly reserved to Hindu parties, is occasionally applied. The following cases appear to have been decided mainly, and some entirely, according to that law. For full information on this curious and interesting branch of the Hindú law, see 1 Coleb. Dig. 21, 22. Macn Cons. H L. 328. 1 Macn. Princ. H. L 239 2 Do. 183. 317 *et seq*

[2] 2 Macn. Princ. H L 319

sale, founded upon the necessity of the family. *Doe dem. Gunganarain Bonnerjee* v. *Bulram Bonnerjee.* 20th July 1818. East's Notes, Case 85.

9. By the Hindú law, twelve years are allowed for the re-appearance of a missing person: after the lapse of that period he will be considered to be dead.[1] *Mt. Ayabuttee* v. *Rajkishen Sahoo.* 25th April 1820. 3 S. D. A. Rep. 28.—Fendall & Rees. *Ramlochun Pridhan* v. *Hurchundur Chowdree.* 13th Aug. 1836. 6 S. D. A. Rep. 98.—Barwell & Stockwell.

10. But by the law, as current in Benares, fifteen years will be allowed for re-appearance, if the absentee, at the time of his departure, was under fifty years of age.[2] Note by Sir F. Macnaghten in *Doe dem. Gunganarain Bonnerjee* v. *Bulram Bonnerjee.* 20th July 1818. East's Notes, Case 85.

II. Muhammadan Law.[3]

1. *Generally.*

11. A deed was admitted, in conformity with the opinion of the law officers, on the testimony of the *Kázi*, whose seal was affixed to it (not his signature), and of the *Munshí* who drew it, though there were no subscribing witnesses. Another deed (of marriage settlement), to which the above apparently referred, but to the execution of which there was not the requisite proof, provided that, in lieu of her dower, the wife should take all the property the husband "then possessed, and might possess thereafter." The law officers declared that this could only have conveyed the property possessed by him at the time. *Musnud Ali* v. *Khoorsheed Banoo.* 14th Aug. 1801. 1 S. D. A. Rep. 52.—Lumsden & Harington.

12. The declaration of a person of unsound mind is insufficient to establish parentage, or even of one of sound mind, where the parentage is claimed by another.[4] *Rujub Ali Khan* v. *Ramchunder Chutoorjea.* 10th April 1820. 3 S. D. A. Rep. 23.—C. Smith.

13. According to the rule of Muhammadan law, it is necessary that the plaintiff should adduce evidence to prove his claim on simple denial by the defendant; but when any special plea is urged the *onus probandi* rests with the defendant.[5] *Hukeem Wahid Ali* v. *Khan Beebee.* 6th Aug. 1821. 3 S. D. A. Rep. 102.—Goad.

2. *Presumptions.*

14. Where a Muhammadan man and woman live together as husband and wife, they will be presumed to be man and wife, though not publicly married, where nothing appears to invalidate that presumption; and a son born under such circumstances inherits equally as a son in proved wedlock, and is not divested of his right as one of the heirs to the estate

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[1] 2 Macn. Princ. H. L. 9, note. 26.

[2] But it is stated, in a precedent by Sir W. Macnaghten, that, by the law of Benares, the wife of a person who has been missing for fifty-five years has no right to claim his share of joint property. 2 Macn. Princ. H. L. 27. Case ix.

[3] The following cases have been arranged under this division of the title Evidence for the same reason as those above placed under the division Hindú Law. See *ante*, note 1. p. 216.

[4] It is a well-known rule of Muhammadan law, that a declaration by a person of his being the father of such a child is sufficient to establish the fact, provided there be nothing manifestly to repel the presumption. Here, however, there was sufficient for that purpose, independently of the disordered state of the intellects of the declaring party, the first husband of the woman, whom he claimed as his wife, and the mother of his children, being alive, and no divorce having taken place between her and such first husband, who also claimed the parentage of her children. — Macn. 3 Hed. 168, 169. And see Macn. Princ. M. L. 61, par. 33. 132. 299. Introd. to Do. xxiii. xxiv. Baillie, Inh. 35.

[5] Macn. Princ. M. L. 370.

of his paternal uncle, though discarded by the latter.[1] *Mihr Ali and another* v. *Kureemoonisa Begum and another*. 28th April 1814. 2 S. D. A. Rep. 112.—Rees.

15. Where one witness stated that he conjectured that the mother of the plaintiff was married to *A*, but admitted that he was not present at the marriage, and that he never heard *A* acknowledge the marriage; and the defendant, denying the marriage, acknowledged that the plaintiff's mother was the *Hárám*, or concubine, of *A*; it was held that such expression, in conjunction with the conjectural evidence of one witness, cannot raise a presumption in favour of the marriage. *Hukeem Wahid Ali* v. *Khan Beebee*. 6th Aug. 1821. 3 S. D. A. Rep. 102.—Goad.

16. According to the Muhammadan law, continued cohabitation and acknowledgment of parentage form sufficient presumptive evidence of wedlock and legitimacy. *Mirza Qaim Ali Beg* v. *Mt. Hingun and others*. 15th April 1822. 3 S. D. A. Rep. 152.—Leycester & Dorin.

17. And the same point was decided by the Judicial Committee of the Privy Council, in *Khajah Hidayut Oollah* v. *Rai Jun Khanum*. 2d Aug. 1844. 3 Moore Ind. App. 295.

18. The fact of a Musulmán woman's having suffered forty-two years to elapse since the death of her alleged husband, without advancing any claim to her share of his property, although many suits had been brought in this interval by the other heirs, was held to furnish strong presumption that she was not lawfully married to him. *Mt. Shumsoonisa* v. *Meer Gohur Ali and others*. 27th Nov. 1827. 4 S. D. A. Rep. 283.—Sealy.

19. Filial relationship, including right of inheritance, to a Musulmán, in the child of his domestic concubine (such child affirming, if capable of speech), is established by his unretracted recognition; provided, however, that paternity be not commonly imputed to another man. *Khairat Ali and another* v. *Zahuran Nissa*. 15th March 1830. 5 S. D. A. Rep. 17.—Rattray.

19 *a*. A child born in wedlock is presumed to be the child of the father; legitimacy following the marriage-bed. *Jeswunt Singjee Ubby Singjee and another* v. *Jet Singjee Ubby Singjee*. 5th Feb. 1844. 3 Moore Ind. App. 245.

20. According to the Muhammadan law, the death of a missing person may be presumed when ninety years from his birth have elapsed, after which his estate may be divided among his heirs. *Mt. Mani Bibi* v. *Mt. Sahibzadi*. 15th April 1831. 5 S. D. A. Rep. 108.—Turnbull & Rattray. *Durvesh and another* v. *Shekhun and another*. 1820. 2 Borr. 20.—Elphinston, Romer, & Sutherland.

21. The mere fact of a Musulmán and his wife living separately is not sufficient evidence of a divorce to enable the wife to recover dower not exigible (*Muwajjal*). *Noorunissa Begum* v. *Nawaub Syed Mohsin Allee Khan*. 26th June 1841. 7 S. D. A. Rep. 40.—Tucker.

III. Sikh Law.

21 *a*. Where it was proved that the widow of a deceased Sikh had allowed another person (who claimed as adopted son of the deceased) to light the funeral pile of her late husband, and that she was not even present at the ceremony; and it also appearing that the deceased had been in the habit of calling him his son; it was held to be strong presumptive evidence of adoption. *Doe dem. Kissenchunder Shaw* v. *Baidam Beebee*. Jan. 1815. East's Notes. Case 14.

[1] 3 Hed. 169. Macn. Princ. M L. 58, par. 13. 262. 300. *et seq.*, and Introd. to Do xxiii. xxiv. Baillie Inh. 35.

IV. In the Supreme Courts.

1. *Generally.*

22. In an action of *assumpsit*, grounded on the judgment of a Court of Justice at Chandernagore, it was held that evidence of collusion and partiality in the Judges was admissible.[1] *Bhowanneechurn Day* v. *Bodinaut Baroodja.* 21st Nov. 1797. Mor. 271.

23. The Court seemed to think that the 37th plea rule, directing no special matter to be given in evidence without leave of the Court, then only applied to cases attended with difficulty, arising from the necessity of setting out a Hindú or Musulmán title.[2] *Anon.* 30th Oct. 1804. Sm. R. 91.

24. A defendant admitting a charge is not restricted in equity to any particular evidence in his discharge. *Peeramah Syrang* v. *Nineapah.* 16th Aug. 1808. 1 Str. 283.

25. On questions of contract or inheritance between natives the Court will investigate according to the English, and not according to the native rules of evidence. *Syed Ally* v. *Syed Kullee Mulla Khan.* 19th Jan. 1813. 2 Str. 191.

26. A subsequent promise by the payee or indorsee of a foreign bill of exchange to pay the bill, was held to be evidence of a regular protest of its dishonour by the drawees. *Richardson* v. *Betham.* 26th Nov. 1820. East's Notes. Case 89.

27. Evidence of justification under general issue can only be given in trespass *vi et armis.* *Buckingham* v. *Larkins.* 2d Term 1823. Cl. R. 1829. 214.

28. Evidence of trading in Calcutta, or other ground of *constructive inhabitancy*, is receivable under the general allegation of "inhabitancy," laid in the plaint as the ground of jurisdiction. *Ramcullian Mundell* v. *Ramchunder Seal and another.* 12th Feb. 1840. Mor. 203.

2. *Presumptions.*

29. A demand of a sum of money deposited with the defendant thirty years previous to the filing of the bill, but sworn by the answer to have been paid over according to the directions of persons whom the plaintiff represented, was dismissed, but without costs; it being presumable, from the lapse of time, that the demand had in some manner been satisfied or released. *Chintadry Petta Peeramah Syrang and others* v. *Nineapah.* 16th Aug. 1808. 1 Str. 283.

3. *Attendance of Witnesses.*

30. The absence of a material witness for the plaintiff was proved, by an affidavit, to be the reason of his not going on to trial; and the affidavit also stated that he had given notice of trial for the sittings after the term. Judgment, as in case of a nonsuit, moved for by the defendant, was refused.[3] *Gyachund Shaw* v. *Mirza Mahomed Cazim Ally Khan.* Hyde's Notes. 16th Jan. 1778. Sm. R. 250.

31. When the Supreme Court see that a witness is kept out of the way, they will allow the plaintiff to save the notice of trial, and, if necessary, will let him put off the trial from time to time until the witness appear. By the Charter, the Supreme Court is empowered to punish the absence of witnesses, not only by fine and imprisonment, but by punishment not extending to life or limb. *Grand* v.

[1] It was held necessary, in this case, that it should appear, either by the judgment or parol evidence, that the defendant was subject to the jurisdiction of the Chandernagore Court at the time of the judgment being pronounced.

[2] Now, by the 53d plea rule, no rule, or order, shall have the effect of depriving any one of the power of pleading the general issue, and giving the special matter in evidence, in any case when authorised by the Statute. 2 Sm. & Ry. 68.

[3] But on the same affidavits a rule was granted to shew cause why the plaintiff should not pay costs for not going on to trial.

Francis. Hyde's Notes. 18th Jan. 1779. Mor. 263.

32. All persons commorant within the provinces are within the jurisdiction of the Supreme Court, *as witnesses*, and subject to a *subpœna ad testificandum. Doe dem. Buddinauth Ghosaul* v. *Deverall.* 29th March 1839. Mor. 184.

32 *a.* And in the event of disobeying such *subpœna*, a writ of *habeas corpus ad testificandum* can be granted by the Court, to bring up the body of the disobedient witness. *Anon.* 16th June 1860. Mor. 146.

33. The Court awarded a writ of *habeas corpus ad testificandum* to the gaoler of the twenty-four *Pergunnahs*, directing him to bring up the body of a prisoner, to give evidence in the cause which stood for that day, but was adjourned till the morrow. *Doe dem. Brujesehree Seatanny* v. *Ramnarain Misser.*[1] 16th June 1800. Sm. R. 148.

34. *Habeas corpus ad testificandum* will issue to the gaoler of a Mofussil Court. *The Queen* v. *Shawe and others.* 23d Oct. 1843. 1 Fulton, 328.

35. On a reference, the non-attendance of witnesses is no excuse for default. *Kistnonundo Biswas* v. *Prawnkissen Biswas.* 19th Jan. 1824. Cl. R. 1829. 300.

36. A copy of a *subpœna*, inclosed in an envelope to a witness, who sends his *Salám* in reply, was held to be good service, although the original was not shewn to him. *Palsgrave* v. *Worrall.* 1st Term, 1833. Cl. R. 1834. 146.

37. The Supreme Court will require distinct and definite grounds to be stated, and an affidavit to be made by the party himself, or his attorney, where a postponement of the trial is moved on the ground of alleged absence of material witnesses. *Ramdhone Ghose* v. *Ramanund Ghose.* 21st June 1838. Mor. 287.

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4. *Examination of Witnesses.*[2]

38. Should a witness prevaricate very much, the Court will direct the Prothonotary to make a minute that the Court entirely rejected the evidence of such witness, on the ground of his having contradicted himself in material parts of his statement; and they will direct that an order to this effect shall afterwards be drawn up, and, in case of appeal, sent with the rest of the proceedings to England. *Ramnarain Tagore* v. *Kistnopersaud Chowdry.* Hyde's Notes. 29th Nov. 1777. Mor. 268, note.

39. In all appealable cases, where the native witnesses appear to prevaricate and to evade questions put, the advocates are at liberty to examine the interpreter as to the mode in which the witness gave his testimony, so that the evidence before the Court of Appeal may be as nearly as possible the same as before the Supreme Court. *Nanderah Begum* v. *Bahauder Beg and others.* Hyde's Notes. 8th Dec. 1778. Mor. 268, note.

40. The Court will not direct a Commission to examine witnesses in a cause where the purpose for which such testimony is sought is against good faith and conscience, and con-

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[1] On an application by the Company's attorney to Sir W. Russell, C. J., in the vacation after the 3d Term, 1832, for a *habeas corpus*, to be directed to the Sheriff to take a prisoner in his custody, on mesne process, before a Commissioner, to give evidence on a special commission of inquiry into certain disturbances, the C. J., after communicating with the other Judges, expressed an opinion that the Court had not any authority to issue the writ in such a case, or to give evidence in any other Court than their own, according to the spirit of the Stat. 43d. Geo. III. c 140., and the provisions of the 44th Geo. III. c. 102.

[2] In a draft Act, intituled, "An Act for the Improvement of the Administration of Justice in the Supreme Court of Judicature at Fort William in Bengal," it is proposed that the taking of evidence by written deposition before the Examiner of the Court be abolished, and that the *vivâ voce* examination of witnesses in open Court be substituted for it, in all suits and on all sides of the Court.

trary to law; and where such defect appeared upon the face of the bill, it was held to be useless to direct an examination of witnesses under such circumstances. *Anon.* 28th Jan. 1814. East's Notes. Case 6.

41. The Court will refuse an order for a prisoner in execution under civil process to be brought up in order to make affidavit of matters in a cause in Court, but will authorize the Under Sheriff for the time being to take affidavits of prisoners in custody. *Ex parte Reid.* 25th Oct. 1819. East's Notes. Case 107.

42. Female witnesses for the trial of an issue, whose rank and Cast will not permit them to appear in public, may be examined by a commission granted by the Court for the purpose, subject, however, to having their depositions suppressed at the issue, if it were shewn that the Cast and rank of the women would have permitted them to appear. *Gourbullub* v. *Juggurnauth Persaud Mitter.* 4th Term 1823. Cl. R. 1829. 247. 2 Sm. & Ry. 9, note. Mor. 277.

43. The examination of witnesses must commence within twelve days after the interrogatories are filed; and merely swearing them will not prevent the bill from being dismissed for want of proceeding. *Secus,* if the examiner had certified that he was prevented from examining the witnesses by other business. *Sreenutty Doyamoney Dabey* v. *Joygopaul Roy Chowdry.* 20th Dec. 1824. Cl. R. 1829. 283.

44. A witness who has been in Court, after an order that he should withdraw, cannot be examined. This is, however, sometimes discretionary with the Judge in civil cases, but never in cases where the proceedings are between the Crown and the subject. *Kissenmohun Sing* v. *Collypersaud Dutt.* 1st Dec. 1830. Cl. R. 1834. 32. *The King* v. *Rajah Buddinauth Roy.* Cl. R. 1834. 32.

45. On the Ecclesiastical side, the promovent's witnesses are to be examined by the Ecclesiastical Registrar on the allegations of the libel only, and no interrogatories are to be filed. *In the matter of the will of George Page.* 16th Jan. 1836. Mor. 284.

46. The Court refused to grant a commission to take an affidavit of the service of a certain order of the Irish Rolls' Court, and of process, and of a copy of the bill, upon a party defendant in a cause pending in the said Rolls' Court. *Walsh* v. *Slater and others.* 25th March 1839. Mor. 295.

47. Rules for the examination of witnesses *de bene esse* must be drawn up for the examination to take place before the Prothonotary. *East-India Company* v. *Radakissen Bysack.* 6th Feb. 1844. 1 Fulton, 406.

48. The rule for the examination of a witness *de bene esse* must be on payment of costs. *Ib.*

49. The Court ordered the Ecclesiastical Registrar to attend the Commissioners appointed to examine a party as to the execution of a will. But Ryan, C. J., observed, "We will in this make the order, but not as a precedent for cases which may occur hereafter. We cannot say that the Registrar should attend a Commissioner in the most distant parts of India, and yet the Ecclesiastical Court is very unwilling to give up possession of its wills." *Unnopoornah Dabee* v. *Ranee Kolochomoney and others.* 17th July 1839. 1 Fulton, 83.

50. A commission for the examination of witnesses operates as a stay of proceedings: in every such commission a term is to be specified for its return. *Machellar* v. *Wallace.* 26th Jan. 1842. 1 Fulton, 145.

51. The rules of evidence are the same in India as in England, and no allowance is made for the character of the natives. *Sreemutty Nubbocoomary Dossee* v. *Goursoonder Seal.* 24th June 1842. 1 Fulton, 15.

52. Six months is not too long a time for a commission for the examination of witnesses in England to be outstanding. *Machellar* v. *Wallace.* 12th July 1842. 1 Fulton, 16.

53. A commission to examine wit-

nesses at Jubbulpore, out of the jurisdiction of the Court, was allowed to be directed to the junior assistant political agent as the party performing the judicial duties in that district, such a direction being conformable to Act VII. of 1841, which gives the Court the power to issue a commission. *Ramchund* v. *Nicholson.* 1 Fulton, 16.

53 *a.* A Musulmán husband was admitted to give evidence in favour of his own wife.[1] *Bibee Ameerun* v. *Shaik Darood.* 1st Term 1843. 1 Fulton, 143.

54. If a commission to take an answer be made returnable on a day certain, the Court has no power to enlarge the time. *Chisholm, Executor,* v. *Gibson and others.* 14th March 1843. 1 Fulton, 146.

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5. *Documentary Evidence.*

(*a*) *Judicial Documents.*

55. The minute of the Registrar on the office copy of an answer is the proper evidence of the time of its delivery to the plaintiff. *Ranganaickaloo* v. *Rama Naick.* 8th March 1802. 1 Str. 151.

56. Under the Indian Press Act, the original declaration filed in the Supreme Court is a record, and as such proves itself. *Macnaghten* v. *Tandy.* 24th Oct. 1838. Mor. 289.

57. A Bill of Sale from a Mofussil Court is a record, and is admissible on proof of its seal. So is an exemplification thereof. *Thakoee Sarap* v. *Smoult.* 1st Term 1843. 1 Fulton, 136.

(*b*) *Accounts and Entries.*

58. A *Muharrir* of the *Jamabandi* office of the Collector of Calcutta produced a *Chitta* book, containing the measurement of lands; but it was not allowed to be read in evidence, as the witness could not tell who wrote it, had been thirty-five years in the office, and thought it was not written by any one who was in the office when the book appeared to have been written. *Doe dem. Loll Sing* v. *Guddadhur Sein.* 23d March 1791. Sm. R. 81.

(*c.*) *Production of Documents.*

59. Where letters had been addressed to the Government, complaining of a grievance which the defendant appeared to have suffered, and praying redress; it was held that such letters are not compellable to be pro-

[1] It is *primâ facie* an anomaly, that whilst a Muhammadan husband is not allowed to give evidence in favour of his wife by the Muhammadan law, nor an English husband to give evidence in favour of *his* wife by the English law, a Muhammadan husband's evidence should be admissible in favour of the wife in an English Court of Justice administering Muhammadan law. In this case, however, it must be remembered that the Court merely administers the Muhammadan law of contract, and is not to be guided in the investigation of facts (for which purpose only evidence is adduced) by the Muhammadan law of evidence. In the investigation of facts, no matter what law is to be administered after they have been brought before the Court, the Court must in every case be guided by those principles which it considers the best for arriving at the truth; that is to say, the principles laid down by its own law of evidence. Now the English husband is excluded, because, in the eye of the law, the husband and wife are one person, and the reception of his evidence would militate against the principle, that no man can give evidence in favour of himself. But by the Muhammadan marriage contract this unity of person is not created. The Muhammadan wife is an independent personage, and has her separate rights and separate property, and she and her husband may enter into contracts without the intervention of trustees: no greater objection, therefore, exists to the admission of the evidence of the Muhammadan husband than to that of any other connection or relative. For the same reason the Muhammadan wife may sue and be sued in her own name.—Fulton. This point of the law of evidence was not expressly decided in the case above noted, but it has prevailed in practice. I may add, that, even by the Muhammadan law, this inadmissibility of the husband to give evidence in favour of his wife prevails only amongst the Sunnys, and has given rise to much contention with the Shias, who maintain the opposite doctrine.

duced in Court upon an action for a libel, without the assent of Government, or of those who represent it in the public offices. *Hayes* v. *Graham*. 29th Jan. 1818. East's Notes. Case 74.

60. By the Indian Press Act, the copy of a newspaper is evidence of the publication of such copy by the person whose name is subscribed to it. *Macnaghten* v. *Tandy*. 24th Oct. 1838. Mor. 288.

61. The production of documents, mentioned in an answer, must be moved for before the cause is at issue. *Mirzahee Begum* v. *Moonshee Fuzzubul Kurreem*. 27th Oct. 1842. 1 Fulton, 84.

62. *Quære*, Whether they should be produced in the Registrar's or Examiner's office? *Ib.*

(*d.*) *Translated Documents.*

63. Translations from the Persian are inadmissible in the Supreme Court, unless made by the sworn interpreter of the Court. *Doe dem. Olijah Raur* v. *Luscarree Butcher*. Hyde's Notes. 11th Mar. 1782. Mor. 267.

64. Where the translation of a Persian document bears the seal and signature of the sworn interpreter of the Supreme Court, the Court will not inquire into the mode in which the translation was made, but will always receive it as *primâ facie* correct at all events. If the defendant can shew that the translation is incorrect in any particular he is at liberty to do so. *Golaubchund* v. *Premsook*. April 1840. Mor. 268, note.

(*e.*) *Untranslated Documents.*

65. The interpreter may be examined as to appearance of forgery on the face of a Persian instrument produced in evidence.[1] *Doe dem. Olijah Raur* v. *Luscarree Butcher*. Hyde's Notes. 11th July 1782. Mor. 267.

66. Generally speaking, no papers will be received as evidence which have words upon them not translated; but there may arise cases where the Court would give time for making translations, as where the papers are in the possession of the opposite party. *Hurrochunder* v. *Lowrie*. 3d Term, 1828. Cl. Ad. R. 1829. 47. Mor. 278.

67. It has been refused, by the Supreme Court, to allow untranslated Persian papers to be put into the hands of the witness, even to prove the signature, though the counsel for the party producing them undertook to have them translated before the trial was over, and stated that the production had only been rendered necessary by matters elicited in the cross-examination of the witness. *Ranee Rajessoree* v. *Ranee Solachanomoney*. July 1839. Mor. 278, note.

68. Where *exhibits*, produced for the first time in the Examiner's office, are required to be translated, the practice is, to move that the interpreter may attend at the Examiner's office. *Woomachurn Doss* v. *Rossmoney Dossee*. 13th Jan. 1840. Mor. 303.

69. Where no particular reason occurred why the necessity of a translation of documents might have been foreseen, and as the expense of the translation would have been great had it been unnecessarily incurred, the Court allowed the interpreter to translate the document *vivâ voce*. *Seerary Mistry* v. *Colly Kinker Paulit*. 18th July 1842. 1 Fulton, 22.

70. An instrument in one oriental language, signed in another, is admissible on proof of the party signing being able to speak the language of the instrument, and without proof of his being able to read it, or of the instruments having been explained. *Thakoee Sarap* v. *Smoult*. 1st Term 1843. 1 Fulton, 136.

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[1] This is more frequently done by reference than by formal examination as a witness.

(*f.*) *Other Documents.*

71. Upon a bill to be relieved against a judgment at law, on a note in writing, the Court will not compel the defendant in equity to produce such note before the Examiner for the purpose of the suit. *Narrain Pillay and others* v. *Executors of Chittra Pillay.* 13th Feb. 1801. 1 Str. 79.

72. The rough draft of a deposition in the Examiner's office, signed by the witness, will be considered as evidence, even though the witness should subsequently refuse to sign the fair copy. *Arnachella Chitty* v. *Vencatachella Moodely.* 22d Feb. 1808. 1 Str. 265.

73. A reference to books in the Master's office must not be made generally, but the parts referred to must be re-copied, otherwise they cannot be considered as put into the answer, and the reference is insufficient. *Kistnomundo Biswas* v. *Prawnkissen Biswas.* 20th Jan. 1829. Cl. R. 1834. 26.

74. A notary's seal upon a power of attorney, without proof that the person purporting to be a notary was such, nor any thing to prove signatures of attesting witnesses, beyond the statement on paper of that notary, is insufficient to prove the execution of such power. *Anon.* 4th March 1837. 1 Fulton, 72.

74 *a.* A Bengálí mortgage will be received in evidence, under the common counts in *assumpsit*, not only as evidence of the loan, but to shew the rate of interest agreed upon between the parties. *Surroopsook* v. *Govind Chunder Bonnerjee.* 31st Jan. 1840. Mor. 244.

75. *Semble*, When interlineations appear in a will, and they are not attested, the will must be proved *per testes*, to shew whether they were made before or after execution. *In the matter of General Hooper.* 19th July 1843. 1 Fulton, 212.

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6. *Secondary Evidence.*

76. A witness may be allowed to produce and read *Chitta* books, not written by himself, as secondary evidence, shewing the contents of papers in the hands of the other party. *Doe dem. Radamoney Dassee* v. *Sri Muti Durga Dassee.* 11th April 1794. Sm. R. 81.

77. *Chitta* books cannot be considered conclusive evidence. *Ib.*

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7. *In Criminal Cases.*—*See* CRIMINAL LAW, 207 *et seq.*

V. IN THE COURTS OF THE HONOURABLE COMPANY

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1. *Generally.*

78. Where, at the formation of a triennial settlement for the conquered provinces, in 1210, F. S., *A* stood forward as proprietor of an estate, and, entering into engagements with Government, held possession for that period; and *B*, the real proprietor, then appeared, and sued to recover the profits received by *A*, alleging that *A* acted on her behalf in making engagements for the lands, and under an agreement to leave *B* in possession of her proprietary rights and profits, but had fraudulently applied them to his own use; *B*'s claim was dismissed, as no written or other specific engagement between the parties had been adduced. *Ranee Bhudorun* v. *Hemunchul Singh.* 15th May 1813. 2 S. D. A. Rep. 59.—H. Colebrooke & Fombelle.

79. Where the head of a village claimed remuneration from the *Thakoor* of a neighbouring village, by the custom of the country, in consequence of thieves having escaped from the village of the former and being traced to that of the latter; the claim was dismissed, it not being strictly proved, by the evidence adduced, that the footsteps of the thieves had been traced to the *Thakoor's* village, nor that property to the amount laid in the petition had been stolen; and it

being necessary to prove every circumstance in cases of this nature, in order to avoid cases of *Jhúthá Puglá*, or fictitious robbery. *Ram Singh Guj Singh* v. *Ubhe Singh Guj Singh.* 15th Aug. 1822. 2 Borr. 354.—Romer & Barnard.

79 *a.* The Court of Sudder Dewanny Adawlut of Bengal having refused to set aside a deed of *Rázi námeh* for compromising an appeal then pending from that Court to the King in Council, alleged to have been obtained by fraud and duress; it was held on appeal, by the Judicial Committee, that the *onus* of proving such fraud and duress lay upon the appellant, in proceeding upon his petition in the Court below; and their Lordships being satisfied that full opportunity for such proof had been afforded him, confirmed the judgment of the Sudder Dewanny Adawlut, but, under the circumstances, without costs. *Motee Lal Opudhiya* v. *Juggurnath Gurg.* 26th Nov. 1836. 1 Moore Ind. App. 1.

80. A composition, the terms of which have not been fulfilled by one of the parties to it, cannot be admitted in his favour as proof of the amount of the claim of the other party. *Pertab Singh Dugar* v. *Anundram Jani.* 27th April 1837. 6 S. D. A. Rep. 160.—Braddon & F. C. Smith.

81. Gross fraud and imposition are not to be imputed upon mere suspicion, and unless the charge be proved a party cannot be released from an agreement entered into by their own act. *Rajunder Narain Rae and another* v. *Bijai Govind Sing.* 20th Dec. 1839. 2 Moore Ind. App. 181.

82. The *onus* of shewing that a compromise has been fraudulently obtained by intimidation and false representation, is cast upon those who seek to impeach the validity of their own deed. *Ib.*

83. A decree of the Sudder Dewanny Adawlut in a suit between two Armenians, whereby they and another person, then deceased, were declared to have been equally entitled to a certain estate, was held to be sufficient evidence of the amount of the said deceased person's share in the estate, in a subsequent suit at the instance of a party claiming directly under his will, and alleging him to have been entitled, by the Armenian law, to the whole. *Gasper Malcum Gasper* v. *Hume and others.* 30th Nov. 1841. 7 S. D. A. Rep. 54.—Tucker & Barlow.

84. In an action for possession of real property on a sale absolute, but in reply to which the defendants pleaded a conditional sale, the plaintiff could not produce a bill of sale; but the return by the defendants to the plaintiff of the *Ikrár námehs* drawn out when the sale was only conditional was held to be conclusive proof of an unconditional sale. *Sheik Dhunnoo Shalgur* v. *Sheik Boorhan.* 19th Sept. 1844. 7 S. D. A. Rep. 181.—Tucker, Reid, & Barlow.

2. *Admissions.*

84 *a.* *A* sued *B* and *C*, his brother and nephew, to recover the moiety of an estate, alleged by him to have been acquired while the family was undivided; and it appeared that *A* had withdrawn a previous suit for the same property, being induced, by a written promise of *B*, to make an amicable surrender of the moiety sued for; this was construed to be a virtual admission of *A*'s right, as member of an undivided family. *Judoo Ram Das* v. *Obhye Ram Das.* 28th Aug. 1813. 2 S. D. A. Rep. 77.—Colebrooke & Fombelle.

85. An admission obtained in a Lower Court from a party who appeared personally, and was unduly pressed by the Judge, was treated as null. *Raja Gris Chandra* v. ———. 17th Feb. 1814. Cited in *Sarup Chand Sarkar* v. *Raja Gris Chandra and others.* 5 S. D. A. Rep. 139.—Stuart & Fombelle.

3. *Presumptions.*

86. Where a decree had remained unenforced for twenty-four years,

and during that time no application had been made for its enforcement, and no reason given why such application had not been made; it was held, that the presumption was, that such decree had been satisfied. *Mirza Husun Ali* v. *Mirza Shureef and others.* 5th March 1811. 1 S. D. A. Rep. 317.—Harington & Fombelle.

87. The fact of a person not having been heard of for fifty years warrants the presumption that he is dead. *Bulraj Rai* v. *Pertaub Rai and others.* 17th March 1812. 2 S. D. A. Rep. 4.—Harington & Stuart.

88. Where one of two brothers, *A* and *B*, purchased an estate in the name of *C*, his nephew, and son of *B*; and it was proved that *A* and *B* had no property in common, and that the whole of the purchase-money was defrayed by *A*; it was held, that *A*, having been in possession of the estate for seven years after the purchase, and having enjoyed all the profits resulting therefrom, the presumption was, that he had purchased it solely on his own account, and not for his nephew; and the Court decided in his favour accordingly.[1] *Sheooram Ghose* v. *Dataram Ghose.* 13th April 1813. 2 S. D. A. Rep. 53.

89. Where *A* had performed the duties of *Karnam* for the space of forty years, without having had his possession disturbed or objected to, and he was certified by the Collector as having been *Karnam*, but without date; it was held that *A*'s grandson was entitled to the office in opposition to the claims of *B*, who alleged that *A* was only a *Gumáshtah* of *B*'s grandfather, who was the former *Karnam*, the Court observing that *A* could not have been a *Gumáshtah* for so long a period; and that this, together with the Collector's certificate, formed convincing evidence that, whether conferred upon him by the Government of the *Zamindár*, or abandoned to him with their consent by *B* or his grandfather, *A* was not a *Gumáshtah*, but the actual holder of the office of *Karnam*. *Diggavelly Parummah* v. *Coontamookala Surrauze.* Case 1 of 1819. 1 Mad. Dec. 214.—Harris & Cherry.

90. In the absence of all proof to the contrary, it will be presumed that possession was given to a donee under a *Hibeh námeh*, in conformity with an express declaration in the deed to that effect. *Shah Ghoolam Mohee-ooddeen Sahib Shootary* v. *Ruhmut-oon Nisa Beebee and another.* Case 1 of 1820. 1 Mad. Dec. 254.—Harris & Græme.

91. The circumstance of bonds and contract paper being in the hands of the obligee must weigh strongly in favour of the claim of the obligee for payment, whilst the allegation of the obligor of its being the practice to leave bonds with creditors after payment can weigh nothing on the other side. *Rajah Soobanadry Apparow* v. *Numboory Vencataputty.* Case 10 of 1821. 1 Mad. Dec. 304.—Harris & Gowan.

92. Where there is no formal separation of interests between brothers, and the parties have lived together as an undivided family till five years after the death of one of the brothers, the presumption is, that a trade carried on by the brothers is a joint one. *Bairy Cundappah Chitty* v. *Bairy Cristnamah Chitty and another.* Case 3 of 1823. 1 Mad. Dec. 372.—Grant & Gowan.

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[1] It was not the question before the Court how far the purchase was regular or otherwise, under Cl. 3. of Sec 29. of Reg. VII. of 1799, which provides, that "all purchases of land at the public sales are required to be made in the names of the persons actually purchasing the same, without any fictitious substitution of the name of any other person whatever." It is declared that any evasion of this rule will render the lands purchased in opposition to it liable to confiscation to Government, or to such other penalty as the Governor-General in Council, on consideration of the circumstances of the case, may think proper to impose. But the discretion thus reserved to Government could not affect the rights of the parties in the cause before the Court, nor could the decision in this case bar the full exercise of the powers reserved to Government by the Regulation. —Macn.

Cl. 3. of Sec. 29. of Reg. VII. of 1799, has been rescinded by Sec. 2. of Reg. XI. of 1822.

93. A claim to a small portion of land, situate in the city of Benares, was dismissed, on presumption that it had been resumed by the former Government, it being proved that it had been occupied by the Company for full twenty years. *Sheopershad and another* v. *The Collector of Government Customs at Benares.* 17th May 1824. 3 S. D. A. Rep. 354.—Ahmuty.

94. Where parties claimed to share in certain landed property, as being descended from a common ancestor, with those in possession, their claim was dismissed; as, though the parties were proved to be descended from the same ancestor, it appeared to be probable that the property had been alienated from the family, and re-acquired by a different branch; and it not appearing that there was any trace of proprietary right or possession on the part of the claimants since the Company's accession to the Dewanny. *Birja Sahee and others* v. *Roopun Sahee and others.* 16th Jan. 1826. 4 S. D. A. Rep. 99.—C. Smith, Leycester, & Dorin.

95. Where a decree had been passed by the Patna Provincial Council for the restoration of an estate (which had been illegally sold) to one member of an undivided Hindú family, on re-payment of the purchase-money, and it being presumable that the right of the other branches of the family had always been kept alive, their respective shares were decreed to them without subjecting them to payment of any part of the purchase-money, which, it was presumed, had been defrayed out of the produce of the joint property. *Suda Sheo Singh* v. *Hur Lall Singh.* 20th June 1826. 4 S. D. A. Rep. 165.—Leycester & Dorin.

95*a*. Where property had been left by will to two absentees, brothers of the testator, and the interest was directed to be paid to the poor until their appearance to claim it, and thirty-five years had elapsed previous to the making of the will since their proved absence from the birth-place of the testator, the Court held that the legacy had lapsed, as the presumption was, that the legatees had died previously to the death of the testator. *Durand and another* v. *Boilard and others.* 15th Feb. 1832. 5 S. D. A. Rep. 176.—C. Smith & Rattray.

96. Where *A* and *B* claimed an estate, under bills of sale from *C*, that to *B* was set aside, though bearing an anterior date, the possession of the titles by *A*, and other circumstances, creating strong presumption of fraud on the part of *B* and *C*. *Chaudhuri Ináyat Ullah* v. *Alexander & Co.* 20th Jan. 1834. 5 S. D. A. Rep. 341.—Braddon.

97. Where, in an alleged adoption, it appeared that there had been no acknowledgment in writing, no notice given to the ruling power, and that the neighbouring *Zamíndárs* had not been invited to be present at the ceremony; it was held, that although, by the Hindú law, such omissions did not invalidate an adoption, still, as it was usual for persons in the situation of life of the adopter in this case not to omit such forms, the omission afforded presumptive evidence that the adoption had never taken place. *Sutroogun Sutputty* v. *Sabitra Dye.* 7th April 1834. 2 P. C. Cases, Case 4.

98. Though the registers made pursuant to the Bengal Regulations are not at all of the nature of conclusive evidence of title (the Regulations themselves providing against that), yet as the act of registration, after a proclamation, amounts to a public, open, and notorious assertion of title, on the one side, the omission to register, unexplained by proof of the ill health of the claimant, or absence in a distant country, or ignorance, affords equally strong presumption of the non-existence of any title on the other. Where, therefore, a party sought to obtain possession of certain property, called a *Madad-i-maásh*, against a defendant, whose adverse possession had existed from 1761, upon the allegation that such adverse

possession was in the character of agent to the plaintiff; the Judicial Committee held (affirming the judgment of the Court below) that the proof of such agency lay on the plaintiff; and the balance of evidence being in favour of the defendant's right to possession, the circumstance of his having registered himself as owner in 1797, without any opposition or subsequent claim to register on the part of the plaintiff, and having continued in undisturbed possession from that period, was conclusive against the claim set up by the plaintiff. *Meer Usd-oollah* v. *Mt. Beebee Imaman.* 30th Nov. 1836. 1 Moore Ind. App. 19.

99. A claim to mesne profits of certain lands which had been adjudged to the plaintiffs under a decree founded on an award of arbitration, preferred nearly twelve years after the date of the decree, was dismissed, on the presumption that the arbitrators had adjusted all differences between the parties respecting the disputed lands. *Raja Rughoonundun Sing and others* v. *Mt. Noorut Pauree and others.* 19th Jan. 1841. 7 S. D. A. Rep. 3.—D. C. Smyth & Dick.

100. In the event of joint succession by a Hindú family to ancestral property, joint tenancy will be presumed until the contrary be proved. *Mt. Joraon Koonwur* v. *Chowdree Doosht Dowun Singh and others.* 19th April 1841. 7 S. D. A. Rep. 26.—D. C. Smyth.

100 *a.* A compromise will be presumed to be valid, unless proved to have been obtained by unfair means by the party seeking to impeach the validity of his own act. *Rajunder Narain Rae and another* v. *Bijai Govind Sing.* 20th Dec. 1839. 2 Moore Ind. App. 181.

100 *b.* The presumption of the law is, that the whole of the property of an undivided Hindú family is in coparcenary. The *onus* lies on a member of such family to prove that it was separately acquired. *Dhurm Das Pandey and others* v. *Mt. Shama Soondri Dibiah.* 8th Dec. 1843. 3 Moore Ind. App. 229.

Attendance of Witnesses.

101. Held, that before an order of dismissal on default is pronounced by the Lower Court, in consequence of the non-attendance of witnesses, it is the duty of the Zillah Judge, according to construction No. 1126, dated the 26th Jan. 1838, to satisfy himself by evidence, on oath, that the defaulting witnesses were material to the cause. *Durjya Dhan Saha and another, Appellants.* 11th Aug. 1840. 1 Sev. Cases, 105.—Reid.

101 *a.* A plea of disgrace, incurred by a personal attendance in Court, urged by a party summoned to give evidence, was held by the Sudder Dewanny Adawlut to be inadmissible. *Mt. Inderjeet Konwur, Petitioner.* 2d May 1842. S. D. A. Sum. Cases, 30.—Reid.

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5. *Examination of Witnesses.*

102. A Musulmán refusing to be sworn to prove the execution of a note, alleging that he was a *Munshí*, and could not take an oath, but, in fact, because he wished to defeat the action, was severely reprimanded by the Court. The Court, in addition, told him it was fortunate for him that the plaintiff had established his demand without his assistance; for had he failed for want of it, it would have been the duty of the Court to have considered what ought to have been done. *Bantleman* v. *Aujoo Lubby Maistry.* 5th Feb. 1807. 1 Str. 225.

103. The inadmissibility of near relations of principals to give evidence to prove claims on books of account, or promises of adjustment of such claims by one party to the other, was held not to extend to a cousin by the mother's side, or a brother's father-in-law. *Khooshal Kishundas* v. *Luhmeedass Kishundas.* 2d Aug. 1813. 1 Borr. 104.—Sir E. Nepean, Brown, & Elphinston.

104. Held, that when the amount of

rents of a village or villages are at issue before a Court, it is the province of such Court, under the general rules prescribed in Sec. 10. of Reg. XV. of 1816, to instruct the litigants to require the *Karnams* of those villages as witnesses, with directions to attend with their official accounts for the period in dispute, or to account for their not being able to produce them. *Rajah Vassareddy Vencatadry Naidoo* v. *Rajah Vassareddy Juggyanada Bauboo and another.* Case 6 of 1822. 1 Mad. Dec. 343. —Ogilvie, Grant, & Gowan.

105. The evidence of a partner in a firm cannot be admitted in a cause instituted for the recovery of a debt due by the firm. *Nihalchund Jaeechund* v. *Shookul Umbachunder.* 11th July 1822. 2 Borr. 286.—Romer, Sutherland, and Ironside.

106. Where the Zillah Court had not thought it necessary to take the evidence of a certain witness called by one of the parties, the sitting Judge of the Sudder Dewanny Adawlut, on appeal, admitted such witness to give evidence under the circumstances. *Mt. Sooruj* v. *Milapchund Huruhchund.* 11th July 1822. 2 Borr. 289.—Romer, Sutherland, & Ironside.

107. Where twenty out of ninety-five defendants confess the justice of the appellant's (the original plaintiff's) right to certain *Serva Mániyam* land in their village, such partial admission cannot avail him, unless he can otherwise prove such right, or unless the whole body of *Mírásadárs* equally admit it, the village being a *Samádáyam* or *Pasungearei* village, *i. e.* a village whose entire lands are either held and cultivated in common by the joint proprietors of the whole village, or are divided, at some fixed period, according to established custom among them. *Appoo Mooyen* v. *Durmarajah Naraina Ramien and others.* Case 1 of 1824. 1 Mad. Dec. 431.—Ogilvie & Gowan.

108. *A* claimed a sum of money from *B*, on a bond alleged to have been executed by him. The bond was produced by *A*; and though the attesting witnesses were dead, its execution and identity were proved by four witnesses on behalf of *A*. *B* brought five witnesses, who asserted that though a *bond, similar* in *amount* and *date*, was executed by *B* to *A*, the bond produced in Court differed *in its terms*, and was not the same bond they attested and saw executed by *B*. Held, that the admission, by *B*'s witnesses, of the existence of *a bond, similar* in *amount* and *date*, independent of other considerations, gave to the evidence a manifest preponderance in favour of *A*; and *B* was accordingly decreed to pay the amount due on the bond with interest. *Narasimmah Chitty* v. *Wheatley.* Case 2 of 1824. 1 Mad. Dec. 435.—Grant & Gowan.

109. A claim to recover money on a bond was dismissed, the Court not believing the evidence of the witnesses of the plaintiff, chiefly owing to their want of respectability. *Sydani Salehoonissa Chowdrayn* v. *Bhobun Monun Lahari and another.* 21st Sept. 1825. 4 S. D. A. Rep. 90.—Sealy.

110. Where witnesses to the fact of certain property having been constituted *Wakf*, deposed vaguely, yet their evidence (corroborated by circumstances) was considered to be legally sufficient. *Abul Hasan* v. *Haji Mohammad.* 17th Feb. 1831. 5 S. D. A. Rep. 87.—Leycester & Ross.

111. The evidence of a single witness, corroborated by circumstances, is sufficient to prove a compromise. *Bireswar Dyal Singh* v. *Jai Nath Singh.* 7th April 1831. 5 S. D. A. Rep. 107.—Turnbull.

112. In a suit for possession of a *Zamíndárí* and other estates, by a party claiming as son and heir of the deceased *Zamíndár*, the defendants denied the title of the plaintiff, alleging that he was a spurious and supposititious child, and tendered fifty-eight witnesses to prove that fact. The Zillah Court, having taken the depositions of thirty of these witnesses, refused to permit the remaining

twenty-eight to be examined, on the ground that, being to prove the facts deposed to by those already examined, it was unnecessary to take their depositions, and ultimately decided in favour of the plaintiff. The defendants appealed to the Sudder Dewanny Adawlut of Bombay, which refused to examine the witnesses rejected by the Zillah Court, and affirmed the decree of that Court. On appeal to Her Majesty in Council, the Judicial Committee remitted the case back to the Sudder Dewanny Adawlut, being of opinion that the refusal, by that Court, to admit the examination of witnesses tendered, was irregular, and that no decision could be come to upon the merits under such circumstances. *Jeswunt Singjee Ubby Singjee* v. *Jet Singjee Ubby Singjee.* 7th June 1841. 2 Moore Ind. App. 424.

113. In the case of a suit transferred from the Court of the Sudder Ameen to that of the principal Sudder Ameen, it was held that the latter was bound to take the evidence *de novo*, instead of deciding on the evidence taken by the Sudder Ameen. *Doorga Dutt* v. *Dirgopal Sing.* 24th Mar. 1842. 7 S. D. A. Rep. 78.—Tucker & Reid.

113 *a*. The examination of witnesses by the Register of the Sudder Dewanny Adawlut must be taken in the presence of both parties, or their *Vakils*, of which due notice by the Register must be given for their attendance before him, conformably to Sec. 16. of Reg. VI. of 1793. *Cowie* v. *Rambaksh Mhetah and another.* 27th Aug. 1842. 2 Sev. Cases 99.—Rattray & Reid.

114. It is irregular in a Court to examine one of the defendants in a suit as a witness in proof of the plaintiff's claim. *Kishen Mohun Raie* v. *Raj Mohun Raie and others.* 2d Dec. 1843. 7 S. D. A. Rep. 141.—Gordon.

114 *a*. The citation and examination of absent witnesses under Act VII. of 1841 do not extend to provinces beyond the Honourable Company's territories, and the personal appearance in Court of a witness may be dispensed with under special circumstances. *Sahebherpehlaud Sein* v. *Chowtereah Runmerden Sein and others.* 26th Feb. 1844. 2 Sev. Cases, 29 *b*.—Reid.

114 *b*. A foreign potentate cannot be called upon to give evidence in the Honourable Company's Courts. *Saheb Pruhllad Sein* v. *Chuttooreeah Kurmurdun Sing and others.* 26th Feb. 1844. 7 S. D. A. Sum. Cases, 57.—Reid.

114 *c*. The Sudder Dewanny Adawlut, on cause being shewn, will direct a lower Court to issue a commission to take the evidence of absent witnesses, as prescribed by Act VII. of 1841. *Muhammud Hussein, Petitioner.* 7th Nov. 1842. S. D. A. Sum. Cases, 40.—Reid.

114 *d*. The evidence of a native subject of rank should be taken by a commission under Act VII. of 1841. *Saheb Pruhllad Sein* v. *Chuttooreeah Kurmurdun Sing and others.* 26th Feb. 1844. S. D. A. Sum. Cases, 57.—Reid.

114 *e*. *Kázis*, or law officers of the Lower Courts, are not to be permitted to take the evidence of witnesses in a civil suit; but the principal native officers of the Zillah and City Judges' Courts may be employed in taking down the depositions of witnesses whom the Zillah Judges may have no time to examine themselves; such depositions to be taken before the parties, or their pleaders, and to be signed by them in testimony of their having been present. *Madhabchandro Mujmoadar and others, Petitioners.* 29th April 1845. 2 Sev. Cases, 183.—Tucker & Reid.

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6. *Documentary Evidence.*

(*a*) *Judicial Documents.*

115. Decrees of the Supreme Court are admissible as evidence in the Sudder Dewanny Adawlut on plain unstamped paper, there being no regulation to the contrary. *Petrus Nicus Pogose, and the Receiver of the Supreme Court.* 9th April 1840.

1 Sev. Cases, 101.—Reid, Rattray, & Lee Warner.

116. A case having been decided by the principal Sudder Ameen and the Zillah Judge entirely by a reference to records of other cases, regular and summary, previously disposed of, the Court set aside both decisions as illegal, and remanded the case, with instructions that the suit should be restored to the file of the principal Sudder Ameen, and tried *de novo*, the plaintiffs being required to file their own evidence in support of their claim. *Ram Suhaee Chobee and others* v. *Enaiet Ali and others.* 22d Aug. 1843. 7 S. D. A. Rep. 130.—Rattray, Tucker, & Barlow.

(*b*) *Admission and proof of Deeds.*

117. The reality of a gift was considered to be fully established, from its appearing that the deed containing it was produced before the Collector, and transmitted by that officer to the Board of Revenue. *Anundchund Rai* v. *Kishen Mohun Bunoja.* 4th Dec. 1805. 1 S. D. A. Rep. 115.—H. Colebrooke & Harington.

118. An *Amánat námeh*, or deed of trust, not produced for a period of twenty years, and no claim made on the strength of it by the party in whose favour it was alleged to have been executed, was rejected as a fabrication. *Hincha Sing and another* v. *Dulela Rai.* 1st Aug. 1808. 1 S. D. A. Rep. 245.—Harington & Fombelle.

119. An *Ikrár námeh*, or written agreement, alleged to have been executed by a female, was held not to be admissible in evidence of a conveyance, where it was in direct opposition to strong circumstantial evidence. *Tejchund* v. *Jugmohun Rai.* 16th Sept. 1808. 1 S. D. A. Rep. 257.—Harington & Fombelle.

120. Where *A* had executed a deed, giving away a certain *Mirási*, and *A* signed the deed as "by consent of *B*," and it appeared, by the decision of the Collector, that such consent was not duly conveyed to *A*, the form transmitted by *B* to *A* being also declared by the Collector to be invalid; it was held, that such decision, passed by a competent authority, was conclusive as to the inadmissibility of the document. *Narsimmarauze* v. *Caroomboo Moodely and others.* Case 12 of 1814. 1 Mad. Dec. 92.—A. Scott & Stratton.

121. Where the seals affixed to two documents alleged to have been executed by the same party were different, it was held that it was incumbent on the person claiming under such instruments, and producing them, to shew, by evidence, that the party who was alleged to have executed the deeds was in the habit of using one or the other, or both of these seals. *Husan Ruza Khan Bahadoor* v. *Mohammud Muhdee Khan.* Case 12 of 1817. 1 Mad. Dec. 167.—Scott, Greenway, & Ogilvie.

122. Where the witnesses to a mortgage bond were dead, but the bond was supported by subsequent possession, the deed, as an old one, was held to prove itself. *Goolabchund Umbaram* v. *Pooshotum Hurjeevun.* 6th Feb. 1823. 2 Borr. 395.—Romer, Sutherland, & Ironside.

123. A claim to an estate by a *Mamlúk* of the deceased proprietor, under an alleged deed of gift, was dismissed with costs, as the document had not been produced in a former action, brought by the widow against the present claimant, when, on his plea of adoption proving untenable, a deed had been filed in Court, by which he admitted her right to succession; which deed, although now disclaimed by him, had been duly recorded and carried into effect, without opposition at the time. *Chundun Koonwaree* v. *Sheo Ratna Singh and others.* 22d Dec. 1823. 3 S. D. A. Rep. 275.—C. Smith.

124. An *Ikrár námeh*, or written acknowledgment, from the defendant to the plaintiff, that the latter is proprietor of a portion of the estate belonging to the former, was held to be good evidence of the transfer, although no consideration was proved; an at-

tempt by the defendant to prove a counter *Ikrár námeh* by the plaintiff having failed. *Ranee Indranee*, v. *Ram Koomar Burm.* 21st July 1824. 3 S. D. A. Rep. 392.—Martin & Harington.

125. Where a person, after having filed a *Rázi námeh*, pleaded that the execution of it had been forced, but, though repeatedly desired to prove his assertion, had failed so to do, the suit was dismissed with costs. *Sheikh Dahoo* v. *The Collector of Purnea, for the Court of Wards.* 2d July 1825. 4 S. D. A. Rep. 80.—C. Smith.

(*c*) *Accounts and Entries.*

126. Entries of part payments in the commercial account-books of a debtor, purporting to have been paid towards liquidating a bond debt, and produced in evidence by his heir, were not admitted as sufficient proof of payment; the creditor denying the receipt of the sums entered, and none of the alleged payments being indorsed on the bond, or otherwise acknowledged in writing to have been received, or proved by witnesses. *Mt. Mukhun* v. *Mohunt Rampershaud.* 15th July 1808. 1 S. D. A. Rep. 242.—Harington & Fombelle.

127. It was held that a person required to prove the payment or liquidation of a promissory note given by her father, whose heiress she was, could not be allowed to produce her own books in evidence of payment, even if such books were free from suspicion; nor would they be admitted as evidence unless supported by other proof. *Mukia Khatoon* v. *Gregory Johannes.* 24th Feb. 1818. 1 Borr. 262.—Sir E. Nepean, Bell, Prendergast, & Warden.

128. It was held that entries in the books of a banker, unsupported by other proof, are not sufficient evidence to prove a debt. *Bunsee Dhur Nundee* v. *Mirza Moohumund Shureef.* 15th Sept. 1818. 2 S. D. A. Rep. 271.—Blunt.

129. A merchant's books, if taken against him in evidence, must also be taken in his favour, unless some good reason to the contrary can be shewn. *Goolabchund Prutab* v. *Manikchund Bhoodur.* 24th July 1823. 2 Borr. 583.—Romer, Sutherland, & Ironside.

130. The account-books of a banking-house will be held to furnish good evidence of a debt, if the authenticity of the accounts be sworn to by the writer of them, or if their authenticity may be presumed by corresponding entries in the books of any other respectable house. *Ulruch Singh* v. *Brijpal Das and others.* 1st Dec. 1824. 3 S. D. A. Rep. 417.—Leycester & Harington.

131. Where no grounds for distrust were apparent, a claim by bankers for the balance of a cash account was awarded on production of the statement thereof in the books of the firm, to the accuracy of which the *Gumáshtah* of the firm, who had made the entries, had deposed, the defect of the vouchers of payment notwithstanding. *Shám Dás and another* v. *Devi Dayal.* 21st Dec. 1831. 5 S. D. A. Rep. 154.—Turnbull & H. Shakespear.

132. Semble, That the revenue accounts cannot be received as evidence deciding the rights of parties which may be allowed in those accounts. *Radha Gobind Singh* v. *Gorachandra Gosain.* 15th April 1833. 5 S. D. A. Rep. 290.—Halhed.

133. The Court of Sudder Dewanny Adawlut of Bengal ought not to affirm a decree of a Provincial Court in a case respecting a balance of partnership accounts without examining the original account-books of the firm, if they were tendered in evidence before it, although they were not produced before the Provincial Court. *Baboo Benee Suhaee and another* v. *Baboo Hurkishen Doss.* 8th Feb. 1834. 2 Knapp, 255.

134. The Sudder Dewanny Adawlut of Bombay having, on the hearing of a cause, permitted an account

current to be proved by the entries in the plaintiff's *Daftars*, or account-books, and decreed the defendant to pay the balance upon that evidence, unsupported by oral testimony, and notwithstanding the denial of any sum being due by the defendant in his answer; it was held by the Judicial Committee, that, under such circumstances, the books of account of the plaintiff ought not to have been used singly as evidence against the defendant, and that the decrees founded thereon must be reversed. *Sorab-jee Vacha Ganda* v. *Koonwur-jee Manih-jee.* 1st Dec. 1836. 1 Moore Ind. App. 47.

134 *a*. Held, that the accounts of a Government office require to be proved, as those of an individual. *Salt Agent of Bullooah* v. *Chundermonee and others.* 24th May 1844. 7 S. D. A. Rep. 170.—Barlow.

(*d*) *Other Documents.*

135. The respondent claimed certain shares of his father's estate for himself and the other heirs, the whole estate being retained by his brother, the appellant. Partition was decreed by the City Court, according to the Muhammadan laws of inheritance; but on appeal to the Sudder Dewanny Adawlut, the appellant produced a will alleged to have been executed by his father, and which made a partial distribution of the property. This will, however, contradicting the plea on which the appellant had relied for his original defence in the City Court, and, moreover, having been withheld for so long a time, was not considered by the Court as competent to preclude a judgment on the case according to the law of inheritance. *Sufdur Hosein* v. *Enayut Hosein.* 25th Nov. 1805. 1 S. D. A. Rep. 111.—H. Colebrooke & Harington.

136. In a suit for the *Mirási* of certain land, *A* claimed it as having been granted to him by a *Sanad* from Government in 1786, stated to be in his possession, but which he did not produce, bringing forward documents in evidence which did not prove any absolute right to the property, and asserting that he had been ousted in 1796 by *B*, who had procured possession by a false representation to the Collector. *A*'s claim was dismissed for want of evidence, the presumption being that *B* was entitled, by reason of occupancy and actual possession, and under the *Sanad* of the Collector. *Case of Padre George Manente.* Case 9 of 1807. 1 Mad. Dec. 19.—Casamajor, Scott, & Hurdis.

137. A receipt, purporting to be an acquittance for the balance of a bond debt, was produced by the obligor two years after issue was joined, and subsequently to the death of the obligee, whose deed it was alleged to be, the suit having been carried on by his widow: the parol evidence in support of the receipt appeared to be unworthy of credit, and judgment was given against the obligor, who was adjudged to pay all costs. *Anon.* Case 8 of 1815. 1 Mad. Dec. 129.—Scott & Stratton.

138. Under any circumstances the production of documents after a decision has been passed, and when the weak parts of the case are fully disclosed, must be looked upon with suspicion; and in no case can documents so produced be admitted, without the clearest proof of the party's inability to produce them before. *Seeva Naik* v *Subaputty Moodeliar.* Case 3 of 1817. 1 Mad. Dec. 150.—Scott, Greenway, & Ogilvie.

139. Where *Sanads* were exhibited in a boundary dispute, the *Sanad* of a superior officer was held to overrule those of an inferior, although the latter were of more recent date, as they were not acts of an authority competent to affect the validity of the former one, and could not be allowed to interfere with it. *Ragho Lukshumun Juvul* v. *Hoossuen Huedur Khan Surgoorow.* 2 Borr. 592.—Romer, Sutherland, & Ironside.

140. A person claiming as agent of a certain pagoda for an annual donation granted under a *Koul*, affirmed by a *Sanad*, was nonsuited, as the *Koul* was neither signed, sealed, nor attested, and was quite unauthentic in every respect; and there was no proof of the assignment having been paid, according to the tenor of the *Sanad* said to be founded upon it, since the accession of the Company's Government. *Sioram Sudaseo Ranure* v. *Bhaskur Ramchunder Koolkurnee.* 5th April 1823. 2 Borr. 561.—Barnard.

141. Letters cannot be admitted as evidence to establish a fact, unless they be distinctly proved to have come out of the hands of the persons to whom they purport to be addressed. *Aroovela Roodrapah Naidoo and another* v. *Rajah Damerla Coomara Pedda Vencatapah Naidoo Bahadoor.* Case 11 of 1824. 1 Mad. Dec. 471. —Grant, Cochrane, & Oliver.

142. Where certain *Lákhiráj* land was claimed, and the quantity was differently stated from what it had been in a former summary suit, nine years having elapsed since the dismission of that suit; it was held, under the circumstances, that the production of the *Taidad* was not sufficient proof to uphold the claim, as, moreover, the claimant was unable to prove that he had possession of the land under a valid *Sanad*. *Ram Koomar Rai* v. *Rampershad Bulea.* 15th March 1825. 4 S. D. A. Rep. 36.—C. Smith & J. Shakespear.

143. Where, in an action for recovery of a principal sum and interest on a bond, the borrower pleaded repayment, and produced receipts on paper stamped six years after the date of their execution, it was held that such documents were inadmissible; and as there was no other evidence of the payment of the money, the claim was adjudged. *Kashee Surum Chukrwurty* v. *Ramkishen Geer.* 26th Jan. 1826. 4 S. D. A. Rep. 108.—Sealy.

144. In a claim to hold certain lands rent free, there being no *Sanad*, and no proof of the lands having been held as *Lákhiráj* since 1765, the Court rejected a document purporting to be an order from the Collector in 1771, on the grounds that it was either a forgery, or had been obtained by fraud or misrepresentation. *Ram Pershaud Sirkar* v. *Odey Narain Mundul.* 15th May 1826. 4 S. D. A. Rep. 155.—Leycester & Dorin.

145. Documentary evidence produced in proof of a sale was held to be liable to suspicion when produced by an alleged buyer, who was a servant of the proprietor of the vended property, to whose hands, according to the custom of the country, the seal of the proprietor may have been frequently entrusted. *Meerza Moohummud Ali* v. *Nuwab Soulut Jung and others.* 27th June 1826. 4 S. D. A. Rep. 168.—Leycester & Dorin.

146. A bond executed in Calcutta on plain paper on the 27th Feb. 1824 was put in evidence by the plaintiffs, and had been generally admitted by the defendant in his answer. Held, that it was not receivable in evidence, unless stamped, under Reg. XVI. of 1824,[1] and it was returned to the exhibiting party that he might get the proper stamp affixed. *Surajnaráyan* v. *The Assignees of the late firm of Palmer & Co.* 5th March 1833. 5 S. D. A. Rep. 271.—Rattray & Halhed.

147. Where, in a *Sanad*, the situation of the lands bestowed by it as a free tenure was not specified, but was satisfactorily proved by a subsequent writing of the donor; it was held that the *Sanad* was valid. *Harris* v. *Debipershad Chatteh Burdar and another.* 24th Jan. 1835. 6 S. D. A. Rep. 17. —Robertson.

148. A document stamped under the provisions of Cl. 5. of Sec. 14. of Reg. X. of 1829 was admitted, it being presumed that the requisite forms had been observed in obtaining the stamp. *Thootimjah and another* v. *Baboo Kirit Singh and others.*

[1] Rescinded by Sec. 2. of Reg X. of 182).

19th Feb. 1835. 6 S. D. A. Rep. 21.—H. Shakespear.

149. No claim can be founded on a document judicially declared to be false and invalid, even against the party producing it, and asserting its genuineness and validity. *Beebee Mariam Hume* v. *Carapiet Archbishop and another.* 26th Aug. 1835. 6 S. D. A. Rep. 39.—Rattray, Barwell, Stockwell, E. Harington, & Braddon.

150. The draft of an acknowledgment of a debt, and an agreement to pay the same, which was sworn to have been drawn up in the presence of the debtor, but was not signed by him, was admitted as evidence of the debt by the Judicial Committee of the Privy Council, and a decree made in the Lower Courts upon such evidence was affirmed, with costs. *Edul-jee Fram-jee* v. *Abd-oolla Hajee Cherak.* 5th Dec. 1837. 1 Moore Ind. App. 461.

151. An agreement rendering the defendant responsible for certain arrears of rent, and executed on a stamp of inadequate value, was held not to be admissible as evidence under Cl. 1. of Sec. 3. of Reg. X. of 1829.[1] *Elliott Macnaghten* v. *Juggomohun Biswas and another.* 24th Aug. 1840. 6 S. D. A. Rep. 303.—D. C. Smyth & Tucker.

152. Documents executed on plain paper, under Sec. 79. of the Act for the Relief of Insolvent Debtors (9th Geo. IV. c. 73), are admissible as evidence in the Honourable Company's Courts without being stamped. *Cowie* v. *Rambuksh Mheta and another.* 15th Sept. 1842. 7 S. D. A. Rep. 118.—Rattray & Reid.

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7. *Secondary Evidence.*

153. Where a party claimed certain property under a *Hibeh námeh,* and did not produce the deed, alleging that it was lost, and giving various frivolous reasons for such loss, he was nonsuited, with all costs against him. *Zamíndár of Carvatenagar* v. ———. Case 12 of 1815. 1 Mad. Dec. 133.—Scott, Greenway, & Ogilvie.

154. A *Zamíndári* was transferred by *A* to *B,* and the transfer was registered by the Collector. *A* asserted that the transfer was in the nature of a mortgage, and referred, in support of his allegation, to a letter addressed by him to the Collector, which was the letter on the receipt of which the Collector made the registry of the transfer. He also alleged that he transmitted a copy of an agreement by *B,* to restore the land on payment of the mortgage money, for the information of the Collector. *B* denied having executed the agreement. Held, that a copy of such letter to the Collector could not be admitted as evidence to prove any controverted fact, and much less could the Court admit the copy of a copy of an instrument which the other party denied that he ever executed. *Anon.* Case 7 of 1816. 1 Mad. Dec. 136. — Scott, Greenway, & Stratton.

155. It is not absolutely necessary to register an *Inám sanad* in the Collector's *Kach'hári;* and if it be produced in Court it will be admitted as evidence, the registry being a question between the grantee and the Government, with which the other party has no concern. *Zamíndár of Carvateenagarum* v. ———. Case 8 of 1816. 1 Mad. Dec. 138.—Scott & Greenway.

156. *A,* claiming a right of preemption under a certain mortgage bond, said that he had given the original deed to *B,* who was in league with his adversaries, but begged that he might be allowed to produce a copy of it as evidence. The Court held, that the copy, being admitted by *A* to be unauthenticated, could not be received in evidence. *Meeya Na-*

[1] For rules respecting documents filed in Court, which have been improperly executed upon plain paper, or upon stamps of inadequate value, see the Circular Order, No. 179 Vol. 3. Sudder Dewanny Adawlut Circulars.

gur v. *Bhacedas Bhookundas.* 1822. 2 Borr. 352.—Sutherland.

157. Although, in the law of evidence, it is a general rule that copies of papers authenticated by an authorized officer are good evidence of the contents of the originals, without any proof of their being examined copies; yet when such copies are from originals, in a language foreign to that of the authenticating authority, it is desirable that witnesses, who had examined such copies with the originals, should be heard in proof of their accuracy, particularly in cases where the opposite party may contest their correctness. *Cotaghery Boochiah and another* v. *Rajah Vutchavoy Vencataputty Rauze.* Case 4. of 1823. 1 Mad. Dec. 381.—Ogilvie, Grant, & Gowan.

158. Where a claimant to certain lands, as rent free, produced a *Sanad* of the *Zamíndár*, dated 1196 B. S., purporting to be a renewed one in consequence of the destruction of the former title deeds; it was held that, as there was no other proof of the claim, it was inadmissible, and was dismissed accordingly. *Radanath Chatoorjea* v. *Neel Komul Paul Chowdree and others.* 6th March 1827. 4 S. D. A. Rep. 228.—Leycester & Dorin.

159. A copy of a deed of mortgage, alleged to have been executed sixty-five years previously to the institution of a suit against parties who held possession, as they asserted, under a bill of sale, but which bill of sale they did not produce, nor even a copy of it, was held to be evidence of the mortgage, though only supported by hearsay evidence. *Rai Hurnarain Sing and another* v. *Adub Sing.* 16th March 1835. 6 S. D. A. Rep. 24.—Robertson.

160. Semble, Copies of documents, for the originals of which no proof was given of search, cannot be received as secondary evidence. *Meer Usd-oollah* v. *Mt. Beebee Imaman.* 30th Nov. 1836. 1 Moore Ind. App. 19.

161. The recital of a power of attorney in a will, affecting to transmit the authority conferred by it, is not sufficient evidence of the contents of such an instrument, in the absence of proof of its loss or destruction. *Boman-jee Muncher-jee* v. *Syud Hoossain Abd-oollah.* 7th Dec. 1837. 1 Moore Ind. App. 494.

162. Debt on Bond. The defendant, by his answer, denied his execution of the bond. The plaintiff, in his reply, stated the accidental destruction of the bond, and prayed leave to put in evidence a registered copy thereof, which the Court allowed, and, at the same time, ordered the fragments of the original to be produced. At the trial the plaintiff produced the fragments, and, under Sec. 2. of the Madras Reg. XVII. of 1802, put in as evidence a registered copy of the bond. The Court admitted the registered copy as evidence, and found for the plaintiff. The Judicial Committee of the Privy Council, on appeal, reversed this finding, on the ground that the registered copy, in the absence of satisfactory evidence of the destruction of the original bond, was improperly admitted as secondary evidence. *Syud Abbas Ali Khan* v. *Yadeem Ramy Reddy.* 16th June 1843. 3 Moore Ind. App. 156.

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8. *Evidence in Appeals.*

163. The Court will receive fresh evidence in appeal, on clear and unquestionable proof[1] that it could not be discovered until after the decree of the Provincial Court. *Nubkishen Sein* v. *Kishen Mohun Sein.* 1st Sept. 1806. 1 S. D. A. Rep. 159.—H. Colebrooke & Harington.

164. Where the plaintiffs, in an action in the Zillah Court for the recovery of a village, stated that they had lost their *Dánapatram*, or deed of gift, under which they claimed,

[1] Without such proof such evidence would be rejected, as liable to suspicion of fabrication.

but mentioned, in their reply in the Sudder Adawlut, when the proceedings had nearly been brought to a conclusion, that they had recovered the same, and prayed the Court to receive it with other documents; the Court would not allow them to be produced in evidence, the plaintiffs having failed otherwise to shew any title to the estate, and the production of such documents, at such a period, being necessarily to be looked on with suspicion.[1] *Anon.* Case 9 of 1811. 1 Mad. Dec. 43.—Scott & Greenway.

165. The Court of original jurisdiction is the Court in which the defence is to be made, and a party in a Court of Appeal can claim the admission of further evidence, whether documentary or parol, only on the ground of his inability to produce such evidence in the Lower Court; and such inability must be most satisfactorily established, for otherwise the Court of Appeal would be liable to admit evidence fabricated for the express purpose of meeting the decree appealed from. *Rajah Vencata Permal Rauze* v. *Abbot and another.* Case 16 of 1812. 1 Mad. Dec. 66. —Scott, Greenway, & Stratton.

166. A fact brought forward in the petition of appeal to the Sudder Court, and of which the appellants must have been previously aware, was held not to be admissible as evidence, as it was incumbent on them to have brought the fact in issue in the Lower Court. *Arnachellum Pillay* v. *Iyasamy Pillay.* Case 5 of 1817. 1 Mad. Dec. 154. — Scott, Greenway, & Ogilvie.

167. Copies of examinations taken by the Zillah Judge at the original hearing of the suit in appeal, the whole of the proceedings in that case having been quashed, cannot be admitted as evidence by the Sudder Adawlut: in such a case, the Court remarked, nothing but proof of the death of the witnesses could at all warrant the admission of their former examinations on the record as evidence. *Veeraraghoovien and others* v. *Toppa Moodely and others.* Case 11 of 1817. 1 Mad. Dec. 158.—Scott & Greenway.

168. In the case of an appeal, defended by the assignees of an insolvent firm, appointed under the 9th Geo. IV. cap. 73. the evidence of one of the partners was received in appeal. *Surajnarayan* v. *The Assignees of Palmer & Co.* 5th Mar. 1833. 5 S. D. A. Rep. 271.—Rattray & Halhed.

169. Evidence tendered to the Sudder Dewanny Adawlut of Bengal, on a petition of review, which was refused, and the order of refusal not appealed from, though forming part of the transcript, cannot be referred to in the argument upon the appeal from the original judgment. *Sheikh Imdad Ali* v. *Mt. Kootby Begum* 25th June 1842. 3 Moore Ind. App. 1.

170. A defendant not having appeared in the first instance before the Zillah Court, and the case having been heard, in consequence, *ex parte*, has no right, on appeal to the Sudder Dewanny Adawlut, to bring forward evidence to set aside that adduced by the plaintiff.[2] *Sukeenah Khatun* v. *Imbach.* 5th July 1836. 6 S. D. A. Rep. 76.—Braddon & Stockwell.

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[1] No explanation was afforded by the plaintiffs of the time when, the place where, or the manner in which the *Dánapatram* was recovered, and no satisfactory reason was assigned for not filing the other documents in the Zillah Court

[2] In the judgment in this case the Court observed, "The reception, by the Sudder Dewanny Adawlut, of documents which were not only not tendered in the Lower Court, but rather wilfully withheld, would tend to render this a Court of first resort instead of a Court of Appeal, and such a practice, if allowed, would be fraught with mischief, particularly in cases like the present, where the defendant, in her appeal, acknowledged having neglected to defend the suit after receiving the usual notice."

EXAMINATION OF WITNESSES.

I. In the Supreme Courts.—See Evidence, 38 *et seq.*

II. In the Courts of the Honourable Company

1. *In Civil Cases.—See* Evidence, 102 *et seq.*
2. *In Criminal Cases.—See* Criminal Law, 207 *et seq.*

EXCEPTIONS.—See Practice, 135 *et seq.*

EXCLUSION FROM INHERITANCE.

I. Hindú Law.—See Inheritance, 237 *et seq.*

II. Muhammadan Law.—See Inheritance, 313 *et seq.*

EXECUTION.

I. In the Supreme Courts, 1.

II. In the Courts of the Honourable Company.—See Limitation, 26, 27.

I. In the Supreme Courts.

1. A motion was made to set aside an execution, under which a house had been seized and sold, on the ground that the house (together with some jewels) was pledged to a third person for more than it was worth, and therefore that it could not be considered as the defendant's property. The Court held that an execution could not be set aside on an affidavit of such matter, but that the defendant should prove his title in an ejectment, or in equity. *Smith* v. *Duffield.* 2d July 1776. Sm. R. 73.

2. The plaintiff has fourteen days to charge the defendant in execution, after judgment given, and two terms if judgment be confessed. *Hart* v. *Sealy.* 1st Term 1815. Cl. Ad. R. 1829. 34.

3. It was held, that where, by the 87th plea rule[1], the plaintiff is required after judgment to charge in execution a defendant in custody within ten days next after the time allowed by the rules; and that where no provision is, in fact, made by the rules for such a case, and no time specified; that the time must be taken to be that allowed by the rules of the King's Bench, which is two terms.[2] *Anon.* Jan. 1815. East's Notes. Case 11.

4. Semble, No other writ of execution than the particular form of such writ given by the Charter can be sued out in the Supreme Court. *Marca Zora* v. *Moses Cachecarraky.* 21st March 1816. East's Notes. Case 49.

5. Where the posterior of two judgment creditors sued out execution, and delivered his writ to the Sheriff, and got it executed before the prior judgment creditor had stirred, he was held to be entitled to the preference, although the prior judgment creditor had first of all issued his writ which was returned *nulla bona. Ib.*

6. Dictum of Sir F. Macnaghten: "Lands in Calcutta have been sold in execution ever since the establishment of this Court, and for more than ten years before the decision of that case, in which they were declared to be fee simple." *Joseph* v. *Ronald.* 27th March 1818. Cited in 1 Moore Ind. App. 326.

7. A *capias ad satisfaciendum* having expired without being delivered to the Sheriff, may be quashed

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[1] See 2 Sm. & Ry. 87 par 3.

[2] In this case Mr East attempted to take a distinction between judgments confessed and adverse judgments, on the grounds that the time allowed for charging in execution after judgment was a mere favour to the defendant, and that by voluntary *cognovit* he had merely abandoned his claim to that favour, *sed non allocatur*

and a new one issued, on putting in the expired writ without any certificate or affidavit. *Prawn Kissen Biswas* v. *Strettell.* 30th Oct. 1823. Cl. R. 1829. 203.

8. The Court have no power to reduce a levy, but will give the parties the option of a reference to the Master, or issues. *Sreenauth Mullick* v. *Groopersaud Bose.* 1st Term 1829. Cl. R. 1834. 24.

9. Per Grey, C. J. A writ of *fieri facias*, in actions on contracts, issues on the judgment against all the lands of the defendants, wherever situate in the provinces, and the Sheriff sells. *Doe dem. Bampton* v. *Petumber Mullick.* 29th Oct. 1830. Bignell, 40.

10. Company's paper, belonging to a defendant, being extended in the Accountant-General's hands, under execution at the suit of the plaintiff, the Court refused to make any order that it should be paid over to the Sheriff; and after the Sheriff received the paper the Court refused to make any order that he should indorse it to the plaintiff, or sell it and pay over the proceeds. *Russickchunder Neoghy* v. *Hurripersaud Ghose.* 5th Nov. 1838. Mor. 289.

11. It was held to be doubtful whether the salary of a Government servant could be seized under a writ of execution. *Rajbullub Seal* v. *Mackenzie.* 8th July 1839. 1 Fulton, 82.

12. Where a debt due to the defendant is extended in the hands of the alleged debtor, the Court, upon a motion to pay it over into the hands of the Sheriff, will not try, upon affidavit, the question of the existence of the debt, if the fact of the debt be positively denied by the affidavits, on which cause is shewn against the paying over such debt. If the affidavits, however, do not deny the existence of the debt, the Court will entertain the application. *Dwarkanauth Mullick* v. *Gonsalves and others.* 28th Oct. 1839. Mor. 299.

13. Where a motion to pay over to the Sheriff money seized, in the hands of a third party, has been discharged, upon an affidavit that the money has not yet been received, there must be a *new seizure* after the money has come to the hands of the party, the former one being a nullity, and there being no such thing as a *prospective* seizure. *Moonshee Mahommed Ayassen* v. *Beebee Hanum.* 20th Jan. 1840. Mor. 303.

14. The Sheriff's return that he sent notice of seizure is a sufficient return of a seizure. *Allah Daud Khan* v. *Nuwab Zoolphacar Dowlah Jaun.* 11th March 1841. Mor. 401.

15. Semble, The proceeds of property sold, after the death of the defendant, do not constitute a seizable debt within the meaning of the Charter. *Ib.*

16. If the *pluries* writ of *fieri facias*, under which the seizure is made, be tested subsequently to the defendant's death, the judgment must be revived before seizure. *Ib.*

17. Semble, Immediate execution will be ordered whenever defence has been taken to an action on a negotiable instrument. *Dyalchund Roy* v. *Kisserchund.* 4th April 1843. 1 Fulton, 206.

18. When a debt is seized, under a writ of execution, the Sheriff should only sell the right, title, and interest of the defendant in the debt; the vendee can then bring his action against the debtor. *Gourmohun Day* v. *Thom.* 22d Jan. 1844. 1 Fulton, 405.

19. *Quære*, Whether, on a judgment against one person, a debt due to that one person and another can be seized? *Ib.*

EXECUTORS AND ADMINISTRATORS.

I. In the Supreme Courts.

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I. IN THE SUPREME COURTS.

1. *Appointment of Executors.*

1. The appointment of an executor, though *dehors* the will, will be confirmed by the Court, where the intention of the testator can be collected. *In the matter of the will of Wise.* 6th Dec. 1809. 2 Str. 75.

2. A motion for a commission to swear in an executor at Lucknow was refused. It did not appear, from the affidavit, whether the party were or were not a British subject; but it was sworn that there were goods to be administered within the local limits of the Supreme Court's jurisdiction. *In the goods of William Trickett.* 4th Nov. 1835. Mor. 75.

2. *Grant of Administration.*

(a) *To Next of Kin.*

3. The next of kin applying for administration must be the next of kin *in the whole world*, in order to be preferred to a creditor. *In the goods of Peacock.* Hyde's Notes. 10th Jan. 1782. Mor. 7.

4. But if the next of kin should consent to letters of administration being granted to the Ecclesiastical Registrar, the Court will not allow such next of kin to revoke the administration taken out with such consent, nor will it commit the administration to any of the next of kin who had notice, and consented expressly or tacitly. *In the goods of Astwachatur Malcolm Manuck.* 28th June 1839. Mor. 26.

5. The citations in such a case need not be served personally. *Ib.* Mor. 28.[1]

6. A next of kin, who has been adjudged an insolvent by the Insolvent Court, and who has not obtained his final discharge, will not be allowed to administer. *In the goods of Mary Jackson.* 29th Oct. 1840. Mor. 28.

7. In applying for administration, under a power of attorney from the next of kin, out of the jurisdiction of the Supreme Court, a strictly legal proof of the execution of the power is not essential, provided always that the Court be fully satisfied of its genuineness, but not otherwise. *In the goods of Macgowan.* 8th Feb. 1841. Mor. 370.

8. A mere surmise of the existence of a will, and without actual proof of its existence, will not be sufficient to prevent administration from being granted to the next of kin. *In the goods of Murray.* July 1841. 1 Fulton, 31.

9. But if any will should ever be

[1] But if the next of kin, or creditors, be absent at the time of the return of the citation, the Court will grant administration, if the application be made within a reasonable time. 1 Sm. & Ry. 96, 97.

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[illegible]H AN INTRODUCTION,

[illegible] AND EXPLANATORY, AND AN APPENDIX.

BY

WILLIAM H. MORLEY,

OF THE MIDDLE TEMPLE, ESQUIRE, BARRISTER-AT-LAW,

MEMBER OF THE ROYAL ASIATIC SOCIETY, AND OF THE ASIATIC SOCIETY OF PARIS.

"IF IT BE ASKED HOW THE LAW SHALL BE ASCERTAINED WHEN PARTICULAR CASES ARE NOT COMPRISED UNDER ANY OF THE GENERAL RULES, THE ANSWER IS THIS: THAT WHICH WELL-INSTRUCTED BRAHMANS PROFOUND SHALL BE HELD INCONTESTABLE LAW."

MENU, B. xii. v. 108.

IN TWO VOLUMES.

VOL. I.

CONTAINING AN INTRODUCTION, AND THE DIGEST OF CASES.

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produced, the administration would of course be revoked. *Ib.*

(b). To Creditors.

10. Administration may be refused to the husband of a legatee, as, although he is a creditor of the estate of the deceased, he cannot be considered a creditor according to the meaning of the Charter. *In the goods of Collins.* Hyde's Notes. 8th March 1777. Mor. 2.

11. The Court is not bound to weigh nicely the debts due to creditors contesting the rights of administration, and may grant administration to any applicant. *In the goods of Ambrose Rocke.* Hyde's Notes. 19th Jan. 1779. Mor. 2.

12. Administration will be granted to the principal creditor in degree, and not the greatest creditor in sum. *In the goods of Peacock.* Hyde's Notes. 12th Nov. 1781. Mor. 6. *In the goods of Kellican.* 1st Term 1786. Mor. 10. *In the goods of Lovejoy.* Chamb. Notes. 31st Oct. 1787. Mor. 12.

13. But among creditors of equal degree, the magnitude of the debt is to be the criterion of preference. *In the goods of Lovejoy.* Chamb. Notes. 31st Oct. 1787. Mor. 12.

14. A bond creditor petitioning for administration is entitled to preference to any next of kin who is not the next of kin *in the whole world. In the goods of Peacock.* Hyde's Notes. 10th Jan. 1782. Mor. 7.

14*a*. Administration will be granted to the greater of two bond creditors, provided he enter into an average bond to the lesser to pay him *pro ratâ*, as he should pay himself. *In the goods of Martin.* Chamb. Notes. 10th Nov. 1785. Mor. 9.

15. A creditor petitioning for administration will be preferred to the grandfather of the orphans of the deceased. *In the goods of Eaton.* Chamb. Notes. 29th June 1786. Mor. 9.

16. Where the next of kin are not in the Presidency, the Court will grant administration to a creditor, and will not grant letters of administration, *ad colligenda bona*, to a next of kin in the Presidency, who is not the next of kin in the world. *In the goods of De Mello.* Chamb. Notes. 13th Nov. 1792. Mor. 15.

17. Dictum of Anstruther, C. J. —The Court is bound to grant administration to the superior creditor, and the question who is such, in the event of a dispute, may be tried by the Ecclesiastical Court. *In the goods of Vancitters.* 10th Jan. 1800. Mor. 18.

18. Creditors who are entitled to administer in preference to the Registrar must be substantial legal creditors. *In the goods of Porteous.* 27th Sept. 1842. 1 Fulton, 76.

(c) To Friends, &c.

19. Where the petitioner for administration applies as "a friend" of the deceased, the Court has a right to inquire into his general character, and to refuse administration if such inquiry should prove unsatisfactory.[1] *In the goods of Whiffen.* Hyde's Notes. 27th March 1783. Mor. 8.

20. Held, that the Court would grant a limited administration to a person of its own nomination, rather than allow the prohibition of the 6th Geo. IV. to prejudice a creditor who was not himself, by the rules of the Court, in a condition to take out letters of administration. *In the matter of the will of Gordon.* 26th Aug. 1833. Perry's Notes. Case 3.

21. The *Chilá*, or disciple, of the deceased (a religious devotee) will be refused administration, although the deceased may not leave any relations. *Anon.* 1 Feb. 1837. Mor. 25.

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[1] Administration is now never granted to friends of the deceased. The 39th & 40th Geo. III. c. 79. sec. 21., enacts that all letters *ad colligenda*, or of administration, shall, in such cases, be granted to the Registrar of the Court.

22. Semble, The Registrar of the Court cannot take out letters of administration to a deceased Musulmán, whose laws of inheritance and succession are saved by the 21st Geo. III. c. 70., extending the jurisdiction of the Supreme Court to native inhabitants of Calcutta. *In the goods of Bibee Hay.* 3d Term 1819. East's Notes. Case 105.

(*d*) *To the Registrar.*

23. A military officer dying on service with his regiment, leaving a will, but no executor, within the jurisdiction, but leaving assets within the jurisdiction (besides such property as was immediately connected with his military character), the Court will grant administration to the Registrar of such assets not so connected; the word 'effects' in the 6th Geo. IV. c. 61. s. 1., being considered by the Court as meaning military effects. *In the matter of the will of Gordon.* 26th Aug. 1833. Perry's Notes. Case 3.

23 *a*. Where a military man had died in camp, and the surplus of his property, after paying his regimental debts, had been remitted to the Military Secretary at Bombay, under the 3d & 4th Vic. c. 37. s. 52.; administration, notwithstanding such act, was granted to the Ecclesiastical Registrar, under the 39th & 40th Geo. III. c. 79. s. 21., on the application of a creditor residing at a distance from Bombay. *In the goods of Stant.* 19th Jan. 1843. Perry's Notes. Case 6.

24. Per Ryan, C. J.—A Registrar of the Court has no right, *ex officio*, to administer to the goods of Hindús: the Court has discretion to whom they will grant administration. *Anon.* Barwell's Notes, 8.

25. The Ecclesiastical Registrar has no power or right, *ex officio*, to take out administration in native estates, as his title only accrues where there is no next of kin or creditor, according to the 39th and 40th Geo. III. c. 72. s. 21. *In the goods of Shamloll Tagore.* 27th July 1838. Mor. 25. 1 Sev. Cases, 10, note.

26. Held, that the Registrar of the Supreme Court has no right, by virtue of his office, to administer to estates situated *without* the jurisdiction of the Supreme Court, and belonging to natives[1] who are not inhabitants of the town of Calcutta. *Dickens, Applicant.* 22d June 1840. 1 Sev. Cases, 1.—D. C. Smyth & Tucker.

27. The Ecclesiastical Registrar is bound to apply for, and the Court to grant, letters of administration, even though there be no danger of the estate being wasted. *In the goods of Edmonstone.* July 1841. 1 Fulton, 31.

28. The Court has no power (where there is no will) to withhold letters of administration to the Registrar on application. *Ib.*

29. Not even where there is a probability of a will. *In the goods of Murray.* 1 Fulton, 31.

30. But where an executor, residing without the jurisdiction, appointed certain parties as his agents for the management of the testator's estate, letters of administration were granted to the Ecclesiastical Registrar, who sued the agents for certain notes in their hands; it was held, that the Stat. 39th and 40th Geo. III. c. 79. s. 21. and the Stat. 55th Geo. III. c. 84. s. 2. do not apply, and that the Court has no power to grant such letters of administration, although the executor may be absent, as such executor may appoint an agent. *Turton v. Smith.* 30th June 1842. 1 Fulton, 4.

31. A person appointed under a power of attorney (executed before the death of the testator) to act in place of the executor is entitled to administration in preference to the Registrar. *In the goods of*

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[1] Even though part of the property of such natives should be within the jurisdiction of the Supreme Court.

Staig. 1st March 1843. 1 Fulton, 158.

32. In selecting an administrator in native estates, the Court will usually prefer its own Registrar. *In the goods of Moonshee Ali.* 20th Nov. 1843. 1 Fulton, 339.

33. If special citations be not served on the widow and all the next of kin, whenever they are within the jurisdiction, a grant of administration to the Registrar is irregular. *In the goods of Shaik Nathoo.* 24th July 1844. 1 Fulton, 483.

(*e*) *When refused.*

34. The Court may refuse administration when it would disturb possession taken before the Court was established, and then acquiesced in by all parties. *In the goods of Cummolah Konto Seat.* Hyde's Notes. 9th Nov. 1778. Mor. 3.

35. As a general rule, the Court will refuse administration after the lapse of twenty years from the death of the intestate; but administration would be granted if it were necessary for the person applying to bring some kind of action even after twenty years. *In the goods of Bindabund Gossain* Hyde's Notes. 16th Nov. 1778. Mor. 3.

36. The Court will grant a commission, to be issued beyond its jurisdiction, to swear the administrator of a British subject to the truth of his petition for administration, with the will annexed. *In the goods of Kirkman.* Hyde's Notes. 13th July 1780. Mor. 5. *In the goods of Harrison.* Hyde's Notes. 14th March 1782. Mor. 8.

36*a*. But Impey, C. J., refused to send a commission to Lucknow, to see a party execute an administration bond. *In the goods of Dillon.* Hyde's Notes. 26th March 1781. Mor. 5, note.

37. The Court will refuse administration of the goods of an attainted felon. *In the goods of Rajah Nundcomar.* Hyde's Notes. 17th Jan. 1782. Mor. 5.

38. Under the 55th Geo. III. c. 84. s. 2. letters of administration will not be granted to the attorney of an absent executor, if there be any executors in India willing to act. And before administration is applied for by the attorney of an absent executor, the executors in India must be cited. *In the goods of Frazer.* 13th Dec. 1843. 1 Fulton, 342.[1]

(*f*) *Probate.*

39. A testator leaving a will in England, and, dying subsequently in India, leaving a codicil appointing executors, probate of the codicil by itself will be granted to such executors. *In the goods of Kerr.* 1795. Mor. 74.

40. Probate was granted to an executor upon the affidavit of a person, who, though not an attesting witness, was present at the time of the execution of the will, and who swore that the requisites of the Statute had been complied with; the Court considering that such a person was competent to prove that the solemnities required by the Statute had been complied with, the attestation clause being defective in that respect. *In the goods of Blenman.* 24th Jan. 1843. 1 Fulton, 127.

41. Where the attestation clause annexed to the will shewed that the requisites of the Statute had been complied with, probate was granted. *In the goods of Babington.* 29th June 1843. 1 Fulton, 210.

42. If a will bear on its face a date prior to the 1st Feb. 1839, and be not properly attested, probate will not be granted without an affidavit that the apparent is the true date of the execution. *In the goods of Baddely.* Aug. 1843. 1 Fulton, 214.

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[1] If none of the executors named be resident in India, the affidavit in support of the motion for administration should shew that fact.—Fulton, ib. note.

42 *a*. When an erasure has been made after the execution of a will, and is not signed by the testator, the probate must contain the words intended to be erased. *In the goods of Leach.* 21st Nov. 1843. 1 Fulton, 338.

(*g*) *Recall.*

43. Where the Court at Chandernagore had taken cognizance of the will of a Frenchman, born, domiciled, and dying there, the Supreme Court recalled letters of administration taken by their Registrar on account of bond debts due to the testator's estate by persons living in Calcutta. *Anon.* 14th Nov. 1815. East's Notes, Case 38.

44. Administration granted to the Registrar cannot be recalled. *Manuk* v. *Manuk.* 28th June 1839. Barwell's Notes, 85.

(*h*) *Renunciation.*

45. On the renunciation of the executors, administration will be granted to a married woman without joining her husband.[1] *In the goods of Dixon.* Chamb. Notes. 27th March 1790. Mor. 15.

(*i*) *Administration Bond.*

46. The Court will refuse to put an administration bond in a suit until citations have been issued to the sureties. *In the goods of Saunders.* 19th Jan. 1798. Mor. 18.

46 *a*. In an action against the surety upon an administration bond, taken in the name of the Junior Justice of the Supreme Court, pursuant to the 23d Section of the Charter, the Court thought the case not within the Stat. of Will. III. as to the necessity of assessing damages upon the breaches of the bond; but that, upon a breach of the bond found, the Court should give judgment for the penalty only, leaving it to the several parties aggrieved to establish their respective claims upon the estate by bill, *scire facias*, or summary application, as the case might be, on which the Court, after ascertaining the amount, would order execution to issue *pro tanto*. *Sir W. Burroughs, Bart.* v. *Chisholm.* 2d April 1816. East's Notes. Case 50.

(*j*) *Caveat.*

47. A *caveat* against letters of administration will not be allowed to operate beyond three months. *In the goods of Annava Chingleroy Moodeliar.* 12th Feb. 1801. 1 Str. 71.

(*k*) *Administration and Probate in Native Estates.*

48. Administration of the goods of a Hindú may be granted by the Supreme Court, but the administrator is bound to administer according to the Hindú laws. *In the matter of Commula.* Hyde's Notes. 17th Feb. 1776. Mor. 1.

49. Administration of the effects of a Hindú may be granted to a creditor, provided that the citations be explained to the relations of the deceased. *Anon.* Hyde's Notes. 20th March 1778. Mor. 2.

50. Where a plaintiff sues as heir and representative according to Hindú law or custom, the plaint must set forth in what manner the plaintiff claims to be heir or representative; that is, the relation in which he stands to the deceased, by which he becomes heir and representative of the deceased, and thereby entitled to his real or personal estate sued for. *Rajah Geer Gosain* v. *Punchanund Aghurwalah.* Hyde's Notes. 20th Nov. 1782. Sm. R. 36. Mor. 240.

51. Administration will be granted of the estate of an Armenian dying out of Calcutta. *In the goods of*

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[1] But it should be with the husband's consent.—Mor.

Phanus Johannes. Chamb. Notes. 21st Aug. 1788. Mor. 14.

52. The Court appears to have jurisdiction to grant special administration with the will annexed, *durante absentiâ*, of the executors, of the goods of an Armenian Christian dying at Canton, leaving property at Calcutta, and leaving a will at Canton, all the executors of which were out of the jurisdiction, with, however, a power of recalling the administration if an application should be made by the executors, or by their attorney, duly authorised.[1] *Padre Stephanas Aratoon* v. *Sarkiss Johannes and the cross libel.* Chamb. Notes. 10th Nov. 1798. Mor. 16.

53. Probate of wills was formerly granted to the executors of Hindús and Muhammadans, conformable to the practice of the Mayor's Court, until the Stat. 21st Geo. III. arrived in India, when it was refused. *In the goods of Hadjee Mustapha.* Hyde's Notes. 22d Oct. 1791. Mor. 74.

54. Natives, representatives of a deceased native, are not bound to take out letters of administration in order to be entitled to sue in favour of the estate, or to act as representatives of their intestate. *Chellummal* v. *Garrow.* 17th Feb. 1812. 2 Str. 153.

55. Nor will the Supreme Court, in any instance, cite or use any means toward compelling natives to come in and prove wills or take out letters, or grant them to creditors, to the prejudice of the next of kin. *Ib.*

56. The Supreme Court will grant probate of the will of a Muhammadan affecting the rights of heirs, without first inquiring whether it has or has not in that respect received their assent. *Syed Ally* v. *Syed Kullee Mulla Khan.* 19th Jan. 1813. 2 Str. 180.

57. Probate of a will was refused to a native not being an inhabitant of Madras; such probate, if granted, not subjecting him to the jurisdiction of the Supreme Court, even with reference to matters relating to the will. *In the matter of the will of Taral.* 2d Oct. 1815. 2 Str. 326.

58. Letters of administration will not be granted to a native who is not an inhabitant of Madras. *In the goods of Mahomed Meeah.* 2d Term 1816. 2 Str. 328. note.

59. In Bengálí wills, where one of the subscribing witnesses can write his name, it is not necessary to examine all the witnesses to obtain a probate. *In the goods of Cossinauth Neoghy.* 10th Dec. 1824. Cl. R. 1829. 163.

60. Now, the Court will grant probate or letters of administration in the case of a Hindú or Mahammadan, deceased, leaving property and effects within the local limits of the jurisdiction of the Court. *In the goods of Beebee Muttra, deceased.*[2] 22d Oct. 1832. Cl. R. 1834. 119. Mor. 75.

61. An application for probate, made to a Judge in Chambers, was directed to stand over for Term, Ryan, C. J., saying, that, unless in cases of great emergency, the Judges had made it a rule not to grant probates of wills of native females, particularly markswomen, except upon a *vivâ voce* examination in Court. *Anon.* 15th June 1838. Barwell's Notes, 4.

62. Where a Hindú executor plaintiff makes *profert* of the letters testamentary, the Court will receive no other proof of the will but the probate itself, or the entry in the Registrar's book. *Anunchunder Ghose* v. *Soojee Money Dossee.* 30th Jan. 1840. Mor. 77.

63. If probate of a Hindú will be

[1] The decision in this case was afterwards reversed by the King in Council, not on the ground of want of jurisdiction, but because it was considered that S. Johannes ought to have been preferred as the special administrator.—Mor

[2] In a subsequent case, Ryan, C. J., referring to the above case, said: "The extent of that case was, that the Court would grant probate or administration to Hindus who had property within the jurisdiction."—Barwell's Notes, 8

applied for (though such probate be not necessary), the case must be governed by the same rules as the case of British subjects; therefore, where the testator is a merksman, the next of kin are entitled, as of right, to call for proof of the will in solemn form. *In the goods of Rempriah Dossee.* 29th June 1840. Mor. 79.

64. The Court has a statutory right to grant probates and administrations in native estates, where there is property within the local jurisdiction. The Court has the power of selecting the administrator, and, in most cases, the Registrar will be preferred, but need not apply in his official capacity. In Hindú and Muhammadan cases any party may be appointed by consent of the next of kin. *In the goods of Moonshee Hossein Ali.* 20th Nov. 1843. 1 Fulton, 339.

65. An executor of an executor was recognized by the Court as a Hindú testator's representative. *Sree Mootee Dagumbaree Dabee* v. *Sree Mootee Taramonee Dabee and others.* Macn. Cons. H. L. 168.

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3. *Rights, Authority, and Duty.*

(*a*) *Generally.*

66. The Stat. 21st Geo. III. c. 70. puts an end to the title of the administrator, as such, when set in competition with the right of the heir by Hindú law, and when it is in proof that all the parties are Hindús. *Doe dem. Goculkissore Seat* v. *Ramkissno Hazarah.* Chamb. Notes, 1st April 1785. Sm. R. 79. *Doe dem. Petumber Miter* v. *Manick Dass.* 17th Nov. 1787. Sm. R. 78.

67. Administrators being complainants in equity, were allowed to appeal without giving security for costs. (Dunkin, J., *dissent.*) *Grant and another* v. *Grand.* Chamb. Notes. 13th Feb. 1797. Sm. R. 70. Mor. 54.

68. The transfer of the property of a minor by an administratrix, *durante minoritate*, after the minor had attained his age, will be considered invalid if such transfer be to his prejudice. 17th Feb. 1812. 2 Str. 158.

69. Letters of administration creating a trust only to distribute, the grant of them vests no absolute right in the administrator, so as to conclude a further question as to who is entitled to the property, though the Ecclesiastical Court may have proceeded on the idea that the right to administer, and the right to the property, were correlative. *Vencataram* v. *Vencata Lutchemee Ummall and another.* 23d Feb. 1815. 2 Str. 294.

70. Executors appointed by the will of a Hindú to collect rents, &c., and to pay the same into his estate, are merely managers of the estate, and have no beneficial interest, though the residue be not disposed of. *Sree Muttee Berjessory Dossee* v. *Ramconny Dutt and another.* 26th July 1816. East's Notes, Case 54.

71. Neither does a dedication to the deity-worship the executors are directed to perform, as the testator did in his lifetime, prevent the heir taking an undisposed residue, although he have a legacy. *Ib.*

72. When a testator made two of his sons his executors, and directed that when they should perform a religious or other act they should give notice to their brothers, and they should all perform the act, otherwise whatever the executors might think proper they should do, and should any one raise objections to it they should be inadmissible; it was held, that it did not give the executors an unlimited discretion in spending the testator's fortune in religious ceremonies. *Mullick* v. *Mullick.* 23d June 1829. 1 Knapp, 245.

73. *Quære*, Whether an executor of a native Christian, dying possessed of lands in the Mofussil, can hold them, under Fergusson's Act, against the heir-at-law, when the personal estate is sufficient to discharge the debts? *Stephens* v. *Hume.* 3d Nov. 1835. 1 Fulton, 224.

74. A Hindú executor may deal absolutely with the property, and the

remedy of parties aggrieved by his disposition of the property is against him, and not against the purchaser. *Aushutos Day* v. *Moheschunder Dutt and others.* 8th July 1840. 1 Fulton, 380.

(*b*) *Commission.*

(*a*) *Generally.*

75. Armenian executors of Armenian testators were held not to be entitled to commission or poundage for their administration of the estate of the testator. *Johannes Ter Jacob and another* v. *Shamier and another.* 21st Aug. 1805. 1 Fulton, 124, note.

76. The same was held at Madras. *Seetaramah Pilla* v. *Vasauteepooram Ramasawmy Braminy and others.* 23d March 1808. 1 Fulton, 125, note. (Sup. Cot. Mad.)

77. Commission at the rate of five per cent. was allowed to a native executor of a native testator. *Poosalah Mooneasawmy Naidoo* v. *Vasuntapooram Ramasawmy Braminy.* 22d March 1815. 1 Fulton, 126, note. (Sup. Cot. Mad.)

78. A commission of five per cent. was allowed to the executor of a Hindú testator.[1] *Cossinauth Pundit* v. *Byjeenauth Sahoo and another.* 15th Aug. 1826. 1 Fulton, 114.

79. Native executors or administrators of native testators were held not to be entitled to commission. *Pestonjee Framjee* v. *Dadabhoy Merwanjee and others.* Nov. 1834. 1 Fulton, 120, note. (Sup. Cot. Bomb.)

80. Dictum of Awdry, J.—A native executor to an European estate would be entitled to commission; an European executor to a native's estate would not. *Ib.*

81. Commission was not charged by the native executors of native testators.[2] *Pauliam Narrainsawamy Chitty* v. *Pauliam Arnachella Chitty and others.* Circa 1836. 1 Fulton, 116, note. (Sup. Cot. Mad.)

82. The executor of a Hindú testator was held not to be entitled to commission. *Joygopaul Bysack and others* v. *Ramanauth Bysack.* 18th March 1837. 1 Fulton, 113.

83. Native executors generally attempt to charge a commission of five per cent. upon the assets collected; but the Court, thinking that the reason for giving commission to European executors (who are very frequently mere strangers to the deceased) does not apply to natives, have always resisted it. *Cursondass Hunsraz* v. *Ramdass Hurridass.* 26th July 1842. Perry's Notes, Case 4.

84. An agreement obtained by an executor from the sole next of kin and heir-at-law, for commission, is not such a contract between two independent parties as the Court will sanction or enforce. *Ib.*

(*β*) *Of the Registrar.*

85. The Registrar of the Court was held to be entitled to commission as administrator of an illegitimate intestate, against the nominee of the Crown, such nominee being considered by the Court to stand in the same condition as any other representative of a deceased. *Howard* v. *Hemming.* 13th Nov. 1818. East's Notes. Case 88.

86. Where the Registrar of the Court had obtained administration to the effects of a supposed intestate, who, it was shortly afterwards discovered, had left a will, he was, under the circumstances, allowed one per

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[1] Mr Smoult, the Ecclesiastical Registrar of the Supreme Court, certified, on the 6th April 1836, that he had searched the Records of the Mayor's Court, and also of the Supreme Court, and the registry of his office, and found that a commission of five per cent. had been charged in the accounts filed by executors and administrators, whether British subjects, natives, or foreigners, from 1758 to the present time, upon the assets received by them.

[2] The Ecclesiastical Registrar, Mr. Cator, considered that native executors were not entitled, nor were European executors o natives. 1st June 1836 *ib.*

cent. commission upon the sum collected by him before probate. *Ex parte Hemming.* 4th Feb. 1819. East's Notes, Case 96.

(c) *Sale.*

87. Per Chambers, C. J. — In the case of personal estate left by a British subject, the executor is a trustee after the payment of legacies for the residuary legatee, and when the residue is not bequeathed for the personal representatives among whom he must divide it, according to the Statute of Distributions. In the case of land the executor is trustee, and, if he sell the estate, must hold the produce thereof, after payment of debts and funeral expenses, in trust for the devisee when the land is duly devised by will, or, if there be no such devisee, in trust for the heir-at-law, first making satisfaction to the widow for her dower, where it has not been barred. *Doe dem. Savage* v. *Bancharam Tagore.* March 1785. East's Notes. Case 63.

88. Per Anstruther, R.—At Bombay an executor or administrator may sell the lands and houses of the last owner on the mere authority of the probate or letters testamentary. *Doe dem. de Silveira* v. *Salvador Bernardo Texeira.* Perry's Notes. Case 1.

89. It was held that the executors of an Armenian or British subject could not sell the realty, or make any title, notwithstanding the Charter of 1774, which gives the Court a power of seizing lands in execution for debts, &c.; the words used in the Charter are "after judgment," so that though the Court may so do at their discretion, executors or personal representatives cannot *mero motu*, and certainly can have no power to sell where there are no debts of the testator.[1] *Doe dem. Aratoon Gaspar* v. *Paddolochun Doss.* 9th Nov. 1815. East's Notes. Case 19.

90. Fergusson's Act, 9th Geo. IV. c. 33. authorises an executor or administrator to mortgage as well as sell for the payment of debts. All of the executors need not join in the conveyance. *Doe dem. Cullen and others* v. *Clark and others.* 23d Jan. 1840. Mor. 76.

4. *Liabilities.*

91. A *bonâ fide* purchaser, from an executor, of lands of a British subject, for valuable consideration, was held to be secure, even before the passing of Fergusson's Act. *Doe dem. Savage* v. *Bancharam Tagore.* Mar. 1785. East's Notes. Case 63.

92. The remedy lies against the executor of a Hindú disposing of property unlawfully, and not against the purchaser from such executor. *Aushutos Day* v. *Moheschunder Dutt and others.* 8th July 1840. 1 Fulton, 380.

93. An executor was relieved from his executorship, upon fully accounting and bringing the money belonging to his testator's estate into Court. *Govindchund Bysack* v. *Cossinauth Bysack.* 14th Oct. 1808. Macn. Cons. H. L. 78.

94. Semble, That an executor giving a power of attorney to his co-executor, to enable him to act for him, is liable for monies received by means of the power, under an order directing such monies to be paid to the two executors. As to all other monies the payment to one executor is good. *Arnachellum* v. *Venkpo and others.* 25th Sept. 1815. 2 Str. 316.

95. Where an executor and trustee, under a will, took possession of real property of the testatrix, and kept it in his own hands, and set up, in answer to a bill for an account and

[1] In the case of *Josephs* v *Ronald* judgment was given on the 27th March 1819, when the question concerning the tenure of estates was fully entered into and held to be estates of inheritance, whether fee or customary, but liable to debts, in the hands of executors and administrators, by the 13th and 15th clauses of the Charter.—Note by Sir E H East; and see *infra* p. 299, note 2 and p. 250, note 1.

delivery up of the property filed by the residuary legatee, an alleged will of *A*, stated to have been found among the papers of the deceased, and by which he contended that the testatrix had only a life interest in the premises, and that, therefore, the heir at law of *A* (if any there were), whom he did not name, was entitled; it was held by the Court that it did not lie in the mouth of an executor or trustee, who had received property from his testator, to dispute his title to it, and thereby appropriate it to his own use: that he might relinquish, and even restore to the right owner that which he could not lawfully retain, but if he kept it himself he must account.[1] *Lumsdain and others* v. *Lumsdain.* 8th April 1816. East's Notes. Case 51.

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5. *Assets.*[2]

96. Proof of assets seems to have been required in all cases where not admitted by the plea. *Sealy* v. *Kissen Porreah.* Hyde's Notes. 27th July 1778. Sm. R. 32.

97. A debt due to the estate of a deceased seems to be considered as *bona notabilia,* in the place where the person of the debtor happens to be in custody. *In the goods of Pattaulum Custoory Rungiah.* 8th April 1801. 1 Str. 73.

98. But the Court afterwards refused applications of this nature under similar circumstances. *In the matter of the will of Taral.* 2d Oct. 1815. 2 Str. 326.

99. It was held that a deed of conveyance, executed by one who was at the time indebted to simple contract creditors, with intent to prejudice such creditors, though void as against them, is sufficient to convey the title as between the grantor and grantee; and therefore, on the death of the grantor, the estate does not descend to his representatives, so as that the creditors suing can charge them with the value as assets, but the creditors must take judgment of assets *quando acciderint,* and then bring ejectment for the land; or if the land were *bonâ fide* mortgaged to the grantee before the creditors' debt accrued, and only the equity of redemption were conveyed afterwards in the lifetime of the grantor, the creditors, after taking

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[1] This judgment was confirmed by the Court, in the 4th Term, 1816. The will stated that the testatrix *possessed* and enjoyed the property *in her own right.*

[2] By Fergusson's Act, real estates in India are assets in the hands of the executor or administrator, for the payment of debts, but the Act does not alter the tenure. 9th Geo. IV c 33. s. 6. See per Lord Lyndhurst in *Freeman* v *Fairlie.* 1 Moore Ind. App 305 Clarke Ad. R. 1829. 32. And See *Gardiner* v *Fell.* 1 Jac. & W. 22 1 Moore Ind. App. 299. Mr. Longueville Clark, in a note to his edition of the 9th Geo. IV. c. 33., has the following remarks (p. 107): "A mistake, as important as singular, appears to have been made in framing this Act; important as it regards the numbers and opulence of those whom it affects, and singular because the Bill is known to have been prepared by Mr Robert Cutlar Fergusson. The Act directs that the real estates of British subjects situated within the *general* civil jurisdiction of the King's Courts shall be assets in the hands of executors. Now the civil jurisdiction of these Courts, in respect to British subjects, extends over the three Presidencies, and all real estates situated within these limits, and possessed by this description of persons, are, therefore, to be governed by this law The Act is also applicable to all real estates situated within the *local limits* of the civil jurisdiction of the Supreme Courts, and which do not belong to Mahomedans or Gentoos: and therefore the provisions of the Bill do not apply to property which lies beyond these limits, and which is not held by British subjects Hence it follows that the creditor of any deceased person, who is neither a British subject, nor a Mahomedan, nor Hindoo, may sell his debtor's property, which lies to the west of the Circular Road, but he will lose the benefit of the Act over such parts of the estates as are situated on the opposite side." See *infra* Pl. 103. By a draft Act, intituled, "An Act for the Improvement of the Administration of Justice in the Supreme Court of Judicature at Fort William, in Bengal," (read in Council, for the first time, the 13th March 1847), it is proposed that all the assets of a deceased shall be equitable assets, and that estates shall be administered accordingly.

judgment of assets *quando*, against the grantor's representatives, must file their bill in equity to reach his equity of redemption as equitable assets. *Gobind Doss and another* v. *Parbuttychurn Bose and others.* 26th Jan. 1816. East's Notes. Case 41.

100. Semble, Lands are not made assets generally, in the hands of executors and administrators, by the Charter, but only *sub modo*, under a writ of execution issued by the Court for debts recovered by judgment.[1] *Marca Zora* v. *Moses Cachecarraky.* 21st March 1816. East's Notes. Case 49.

101. But it was afterwards held that land and houses situated in Calcutta, although an estate of inheritance, which descends to the heir, are nevertheless assets in the hands of administrators for the payment of debts. *Jebb* v. *Lefevre.* 4th Term 1826. Cl. Ad. R. 1829. 56.

102. A debt, due by an agent to a military officer dying on service with his regiment, leaving a will but no executors within the jurisdiction, on a private account, will not be included in the "effects, &c." for which the 58th Geo. III. c. 73. and the 4th Geo. IV. c. 81. s. 49. provide. *In the matter of the will of Gordon.* 26th Aug. 1833. Perry's Notes. Case 3.

103. The Stat. 9 Geo. IV. c. 33. respecting the liability of real estates, as assets in the hands of executors and administrators, applies only to the case of persons strictly and technically described as British subjects, except where the lands are situated within the local jurisdiction of the Supreme Court. It does not, therefore, affect the case of lands of an Armenian Christian in the Mofussil. *Stephen* v. *Hume.* 3d Nov. 1835. 1 Fulton, 224.

[1] It was decided in the Court of Chancery (*Freeman* v. *Fairlie* 17th Nov 1828. Cl. Ad. R. 1829. 21 1 Moore Ind App 305), that land and houses in Bengal are freeholds of inheritance, and are not chattels real, and they were held not to pass to the executor or administrator. And See *Gardiner* v. *Fell.* 1 Jac. & W. 22. 1 Moore Ind. App. 299.

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6. *Actions by and against.*

104. An executor, or administrator, as such, may bring ejectment for lands in Calcutta of British subjects: such lands are considered real property, *sub modo*, not as in England, but qualified by the Charter.[2] *Doe dem. Savage* v. *Bancharam Tajore.* 28th March 1785. Sm. R. 88. Mor. 70. East's Notes. Case 63.

105. A suit was brought in the Recorder's Court at Madras, by an executor of a widow, against the executors of her deceased husband, upon a *Cadjan* given to her by him, and for which a suit had been commenced in the *Kach'hári* before the establishment of the Recorder's Court, and judgment was given for the plaintiff, which was afterwards affirmed on appeal to the Privy Council. *Chittra Pillay* v. *Narrain Pillay and others.* 2d May 1799. 1 Str. 18.

106. Where a defendant to an action on the case pleaded *plene administravit* only; it was held that, if the defendant were found to have fully administered, he would be entitled to judgment, because the plaintiff, by taking issue, waives the advantage of his judgment of assets, *quando*, &c. *Mannick Roy* v. *Baudley Raur.* Sittings after 4th Term, 1819. East's Notes. Case 108.

II. In the Courts of the Honourable Company.

107. On the death of a person appropriating property to pious uses, the power of appointing the superintendant of such property is vested in the executor of the appropriator. *Moohummud Sadik* v. *Moohummud Ali and others.* 6th Dec. 1798. 1 S. D. A. Rep. 17.—Cowper.

108. Where an administrator to an estate claimed to receive, in preference

[2] This case is confirmed by *Joseph* v. *Ronald and others.*—Note by Sir E. H. East.

to his attorney, the proceeds in deposit of a suit filed by the attorney against a debtor of the estate, the amount was decreed to the administrator on the ground that the attorney was not specially empowered by him to recover debts by process of law. *Lukshumun Pandoorung* v. *Rughoonath Madhowjee.* 28th April 1819. 1 Borr. 232.—Sir E. Nepean, Bell, & Warden.

109. Though the appointment of other than a Musulmán as executor to the will of a Musulmán is legal, yet it is incumbent on the *Kází* to eject him from being executor; and where a Hindú was appointed executor to a Musulmán, it was declared that the whole of his official acts were valid, until he should be regularly displaced by the *Kází. Moohummud Ameenoodeen and another* v. *Moohummud Kubeeroodeen.* 31st March 1825. 4 S. D. A. Rep. 49. —Harington & C. Smith.

110. A sale made by an administratrix, of the real estate of an intestate situate in the Mofussil, was held to be invalid by the English law, and the son entitled to recover possession, subject to a refund to the purchaser of such portion of the purchase-money as might be proved to have been expended for the benefit of the heir-at-law. *Hoo* v. *Marquis.* 10th July 1827. 4 S. D. A. Rep. 243.—Leycester & Dorin.

111. The appointment, by a Musulmán, of a Christian as his executor does not invalidate a will containing such a provision; nor does the death of that executor, and the failure of the testator to appoint another in his place, imply the annulment of the will. *Imlach and others* v. *Mt. Zuhooroonisa Khanum.* 28th Jan. 1828. 4 S. D. A. Rep. 301.—Leycester.

112. Letters of administration from the Supreme Court confer no title to summary aid from the Zillah Courts in recovering property not in the possession of the party represented at the time of his decease. *O'Dowda* v. *Peearee Lall Mundul and others.* 7th Sept. 1844. S. D. A. Sum. Cases, 61.—Rattray, Tucker, & Reid.

EX-PARTE CAUSES. — See PRACTICE, 302 *et seq.*

EXHIBIT.—See PRACTICE, 195.

EX-PARTE RULE. — See PRACTICE, 51 *et seq.*

EXTENT.

1. Where an order had been obtained to pay over to the Sheriff a sum of money, which had been extended in his hands, and that he, when he should receive it, should pay it over according to the priority of the writs, and no notice of the rule had been served on the other parties; it was held that it was the Court, and not the Sheriff, who ought to determine which of the parties ought to be paid (according to the 15th Sec. of the Charter), and they would not do this in their absence. The parties might have to object, not only to the right of the party applying to be paid at all, but also to the amount of costs incurred, which, under the 15th Sec. of the Charter, were directed to be added to the original debts. The Court, considering that the rule *nisi* had been obtained regularly, directed it to stand over, with liberty to serve it on the other parties, and that service on their attornies was to be good service. *Gopee Dossee* v. *Buddinauth Tewarree.* 5th Nov. 1832. Cl. R. 1834. 44.

FACTOR.—See AGENT, 8, 9; JURISDICTION, 99; LIEN, 1, 2.

FAIRS.—See HÁT, 1 *et seq.*

FALSE IMPRISONMENT.

I. GENERALLY, 1.

II. DAMAGES FOR. — See DAMAGES, 9. 14.

I. GENERALLY.

1. In an action for an assault and false imprisonment, the defendant being a minister of the Nabob, pleading that the plaintiff was a servant of his Highness, who, by virtue of his right and authority, according to the laws and usages of Musulmán families in India, had ordered him to be imprisoned, and then justified what he had done under the Nabob's direction. The Supreme Court allowed the plea. *Sooboo Row* v. *Moolavie Saheb.* 26th Sept. 1818. 1 Str. 297.

2. A civil action for false imprisonment will not lie against a Provincial Magistrate, acting in his judicial capacity, however irregular and illegal his act.[1] *Calder* v. *Halkett.* 30th Nov. 1825. Mor. 179.—(Grant, J., *dissent.*)

2*a*. But it seems that a criminal prosecution for false imprisonment against a Provincial Magistrate will be entertained by the Supreme Court. *The Queen* v. *Ogilvy.* Jan. 1839. Mor. 181, note.

3. *Quære.* Whether an action, or indictment for assault and false imprisonment, will lie against a Sheriff's officer, who peaceably obtained entrance by the outer door in execution of a bailable writ, and after having been forcibly expelled, without having actually made the arrest, procured assistance and entered by breaking open the outer door, and made the arrest? *Aga Kurboolia Mahomed and others* v. *The Queen.* 17th June 1843. 3 Moore Ind. App. 164.

[1] This judgment was affirmed on appeal to the Privy Council. 17th Dec. 1840. 3 Moore, 396 A similar point was decided in *Hossein Ally* v. *Chalmer.* 2d Term, 1824, but the case is not reported.

FALSE PERSONATION. — See CRIMINAL LAW, 252. 470.

FAMILY, UNDIVIDED. — See UNDIVIDED ESTATE, *passim.*

FÁRIKHKHATT.

I. GENERALLY, 1.

II. NATURE AND OPERATION. — See ARBITRATION, 13.

I. GENERALLY.

1. *Fáríhkhkhatts,* proved on evidence to have been granted conditionally, were held to be void, where the condition had failed by the refusal of the holder, and without any fault of the grantor of such acquittance. *Raja Jyporkas Sing* v. *Jog Raj Sahoo.* 10th Sept. 1811. 1 S. D. A. Rep. 343.—Harington & Fombelle.

2. Receipts, or *Fáríhkhkhatts,* do not come under the description of papers which are required by Sec. 13. of Reg. XIV. of 1825[2] to be written on stamped paper. *Noor Bebee* v. *Mt. Ruheema.* 28th March 1822. 2 Borr. 153.—Romer & Sutherland. *Hurgovind Nuthoo* v. *Ishwur Koober.* 26th Nov. 1822. 2 Borr. 296. —Romer.

FARZÍ.

I. GENERALLY, 1.

II. FARZÍ SALES.—See SALE, 32 *et seq.*

I. GENERALLY.

1. A grant obtained by the acquirer, in the substituted name of a female relation (with the apparent intention of enabling her to take the estate at her death), is of no avail, in Muhammadan law, against the right

[2] Rescinded by Reg. I. of 1827.

of the legal heirs of the real grantee. *Sheikh Buhauder Ali* v. *Sheikh Dhomun and others.* 8th Aug. 1808. 1 S. D. A. Rep. 250.—Harington & Fombelle.

1 *a.* *Farzí*, or fictitious names, in grants are not illegal, and the right of property rests in the person to whom the grant is actually made, and not necessarily in the person whose name is made use of. *Sheikh Buhauder Ali* v. *Sheikh Dhomun and others.* 8th Aug. 1808. 1 S. D. A. Rep. 250.—Harington & Fombelle. *Mt. Hyatun and another* v. *Moohummud Hussun Khan.* 3d April 1826. 4 S. D. A. Rep. 134.—Leycester & Dorin.

2. Judgment of nonsuit was passed with reference to the regulations generally, and the circular order of the Court, No. 20, dated July 29th 1809, because the action was brought on the part of a *Farzí.*[1] *Umdat-Un-Nissa and another* v. *Shekh Umad Ud-Din.* 22d July 1833. 5 S. D. A. Rep. 313.—Walpole & Braddon.

FELO DE SE.—See ESCHEAT, 1.

FEMALE INFANTICIDE.—See CRIMINAL LAW, 302.

FEME COVERT.—See HUSBAND AND WIFE, *passim.*

FERRY.—See DUES AND DUTIES, 10, 11.

[1] In Arabic, *Faraz*, amongst other meanings, has that of *proposition*; whence *Farzán*, by *way of proposition*, *i. e.* hypothetically. The word *Farzí* (thus derived) is used to denote an unreal person, whether as non-existent or imaginary, or existent but not interested, *i. e.* a trustee. Not to risk a construction, the word has not been translated. The circular order refers to the institution of suits in *fictitious names.*

This note is by the reporter of the case, but I can find no such meanings of the words *Faraz*, or *Farzán*, in the dictionaries.

FIERI FACIAS. — See EXECUTION, 9. 16.

FINES.

I. IN THE SUPREME COURTS, 1.
II. IN THE COURTS OF THE HONOURABLE COMPANY, 2.
1. *By the Civil Authorities*, 2.
2. *In Criminal Cases.* — See CRIMINAL LAW, 319.

I. IN THE SUPREME COURTS.

1. A fine inflicted by the Board of Revenue, and levied without the authority of any standing regulation of the Government, was decreed to be refunded. *Vencata Runga Pillay* v. *East-India Company.* 26th Sept. 1803. 1 Str. 174.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

1. *By the Civil Authorities.*

2. The respondent, in an appeal, was fined Rs. 100 by the Sudder Dewanny Adawlut, for misstating facts to the Court with respect to a decree of the Provincial Court, affecting the property in dispute, with a view to obtain an order for the enforcement of a decree of the Sudder Dewanny Adawlut, which the Provincial Court had delayed until further instructions. *Duljeet Sing* v. *Sheomunook Sing.* 7th Sept. 1802. 1 S. D. A. Rep. 59.—H. Colebrooke & Harington.

3. The respondents were fined Rs. 200 each, and their *Muhhtárkár* Rs. 50, for endeavouring to impose on the Sudder Dewanny Adawlut a false copy of a record. *Radhamunee Dibeh* v. *Shamchunder and another.* 27th Sept. 1804. 1 S. D. A. Rep. 85.—H. Colebrooke & Harington.

4. The Zillah Judge decreeing summarily to a farmer possession of

lands which the under-tenants, though in balance, refused to give up, fined them Rs. 100 to Government for having retained possession by force: the Court held that the fine was not authorised by the Regulations, and remitted it. *Jugesur Mustofee* v. *Shammohun Rai and another.* 3d Aug. 1807. 1 S. D. A. Rep. 206.—Harington & Fombelle.

5. In a suit by certain landholders against a *Tahsíldár*, for undue exactions, a fine of three times the amount exacted was decreed to Government against the *Tahsíldár*, in addition to the refund to the landholders.[1] *Baboo Deokinundun Sing* v. *Jobraj Rai and others.* 19th Feb. 1808. 1 S. D. A. Rep. 229.—Harington & Fombelle.

6. Where, in a suit for money and property embezzled, the Provincial Court adjudged payment of a third of the amount claimed, to be made by one of the defendants as a fine for his connivance, the Sudder Dewanny Adawlut, on appeal, reversed this order, as being unwarrantable by any Regulation, and inconsistent with the practice of the Civil Courts. *Gokul Pershad* v. *Sunsaree Mul.* 13th Nov. 1827. 4 S. D. A. Rep. 268.—Sealy.

7. It was held that the Rules contained in Sec. 4. of Reg. VI. of 1793 for the award of fines cannot be considered applicable to the case of a person whose attendance may be required as a witness, but on whom a *summons* may not have been served. *Gudadhur Pershad* v. *Maharaja Tejchund.* 7th Dec. 1827. 4 S. D. A. Rep. 287.—Leycester & Ross.

8. A Zillah Judge having fined a defendant Rs. 100 for the temerity of his defence, the Court considered the order to be unjust and contrary to practice. *Ray Radha Gobind Singh* v. *Gorachandra Gosain.* 15th April 1833. 5 S. D. A. Rep. 290.—Rattray.

9. A Zillah Judge is not authorized, under Cl. 3. of Sec. 12. of Reg. XXVI. of 1814, to fine a defendant one-fourth of the value of the stamp required for the petition of plaint, for failing to produce certain documents, the recovery of which by the plaintiff formed the subject of the action. *Rajah of Burdwan, Petitioner.* 7th Sept. 1841. S. D. A. Sum. Cases, 17.—Reid.

10. A Zillah Judge cannot, under Sec. 3. of Reg. XIII. of 1796, impose a fine on the appellant in a miscellaneous case.[2] *Ramchunder Sahoo, Petitioner.* 5th July 1842. S. D. A. Sum. Cases, 30.—Reid.

11. A Zillah Judge cannot impose a fine, under the same Regulation, on a party applying for a rehearing of an order passed in a miscellaneous case.[3] *Ramkishore Surma, Petitioner.* S. D. A. Sum. Cases, 46.—Reid.

FISHERY.—See RIVER, 7 *et seq.*

FIXED RENT.—See ASSESSMENT, 10, 11.

FLOTSUM.

1. Where certain timber belonging to *A* was set adrift by a fresh in a river, and was detained by *B*, the timber farmer, it was urged by the latter that drift timber belonged to the Government, and consequently to its farmer. The right of the farmer

[1] Proprietors and farmers of land are expressly declared by the Regulations (Cl. 7. of Sec. 15. of Reg. VII. of 1799, and a corresponding Clause in Sec. 14. of Reg. V. of 1800, as well as in Sec. 32. of Reg. XXVIII of 1803) responsible for illegal exactions by their agents, and the same principle is obviously applicable to the agents of *Tahsíldárs*, especially when the exaction is made with the knowledge and connivance of the latter. In such cases the agent must be presumed to act for his principal, for it is the duty of the principal to restrain his agent from an abuse of the power vested in him.—Macn. Sec. 15. of Reg. VII. of 1799. has been modified by Sec. 16. of Reg. VII. of 1832, and Act VIII of 1835.

[2] See Construction, No. 1138.

[3] See Construction, No. 1138.

was admitted within certain limits, but *A*'s timber was exempted, as not being within those limits, and the right to recover was upheld, and the amount of *A*'s damages was settled by *Panchâyit*. *Khanoo Ruoot Kulvekur* v. *Dhunbajee Kan*. 6th Feb. 1823. 2 Borr. 273.—Romer, Sutherland, & Ironside.

FORCIBLE DISPOSSESSION.

1. Where the appellant claimed to recover possession of certain lands from the respondent, under Reg. XLIX. of 1793,[1] on the plea of forcible ejectment; on proof of the fact, the summary judgment for his being reinstated by the Zillah Court was confirmed, leaving the respondent to try the question of right in a regular suit. *Ramdhun Rai* v. *Bishennath Bose*. 7th Feb. 1806. 1 S. D. A. Rep. 125.—Harington & Fombelle.

2. In a summary suit for possession of a *Talook* under Reg. XLIX. of 1793, at the express desire of the parties the question of right was taken up by the Sudder Dewanny Adawlut; and on proof of the right resting with the respondent, the alleged dispossessor, judgment was given in his favour. *Pitumber Bhurtacharij* v. *Ramjee Bunojah*. 3d July 1807. 1 S. D. A. Rep. 195.—Harington & Fombelle.

3. On a demand by a farmer on two under-renters, for possession of lands for which they were in balance, at the end of the first year of a lease which had been granted to them, and refused to give up, summary judgment was given for the farmer by the Zillah Court, under Reg. VII. of 1799, and was confirmed by the Sudder Dewanny Adawlut. *Jugesur Mustofee* v. *Shammohun Rai*. 3d Aug. 1807. 1 S. D. A. Rep. 206.—Harington & Fombelle.

4. The claims of Government to lands included in the Decennial settlement are subject to the cognizance of the Courts of Judicature; and no individual can be legally dispossessed from such lands unless a decree of Court have been given against him. Costs against Government were given in a case in which this principle had not been observed, and the plaintiffs, who had been irregularly dispossessed, were at the same time allowed the full benefit of the rule of limitations for the cognizance of civil suits. *Government* v. *Rajesree Dibia and others*. 30th Aug. 1815. 2 S. D. A. Rep. 156.—Harington & Fombelle.

5. In a suit to eject the appellant from a house and premises bought by the respondent, and of which he had taken forcible possession, the appellant produced documents alleging him to be a purchaser of the property; but failing altogether in proving their authenticity, the suit was dismissed with costs. *Kishundas Muloochund* v. *Nowrozjee Munchurjee*. 10th June 1819. 1 Borr. 342.—Hon. M. Elphinstone, Bell, & Prendergast.

6. A *Zamíndár* in Cuttack holding his estate under a five years' engagement, was dispossessed by the Collector during the last two years of his term, on the grounds of oppression towards the tenantry, and of the engagements not having been sanctioned by the superior revenue authorities. Held, in an action for recovery of possession and mesne profits, that, under the circumstances, the Collector was not justified in ejecting the plaintiff, and the Court awarded to the latter the mesne profits for the unexpired period of his engagement; but the Court passed no order in regard to the possession, the term of the engagement having expired. *Government* v. *Sheik Fukeerullah*. 20th June 1837. 6 S. D. A. Rep. 171.—Braddon & Hutchinson.

7. Where *A* claimed to recover a house built by him on land which he alleged had been bestowed on him by a writing by the *Inán dár*, and which he found in *B*'s possession on his return to the village, after sixteen years'

[1] Rescinded by Act IV. of 1840.

absence, *B* urged that the house had come into his possession as *Khote* in the regular way, on *A*'s leaving the village; and it appearing that the writing produced by *A* had been fraudulently altered, and, moreover, that it was declared illegal by the law officer, the claim was thrown out. *B* admitted that *A* had originally built the house, and the Sudder Ameen had allowed the value of the materials; but this was reversed on appeal, as the materials had long ceased to exist, and *B* had renewed the house. *Pandoorung Padya* v. *Narroo Padya.* 8th Feb. 1839. Sel. Rep. 186.—Pyne, Greenhill, & Le Geyt.

8. In an action for certain lands, held under a *Potta*, alleged by the lessee to convey a lease in perpetuity, but declared by the lessor to be conditional, the *Potta* itself not having been produced; it was held, under the circumstances, that the lessor had not the power of summary ejectment, but should have sued to set aside the lease. *Teetoo Ram Huldar and others* v. *Panoo.* 17th June 1841. 7 S. D. A. Rep. 37.—Tucker & Lee Warner.

9. In a suit for the recovery of various portions of land, from which the plaintiff alleged that he had been forcibly dispossessed at different times, but did not specify the particulars; the Sudder Dewanny Adawlut held that he was rightly nonsuited in the Court of the Principal Sudder Ameen, and rejected his petition accordingly. *Syud Akbar Ali Khan, Petitioner.* 14th March 1842. S. D. A. Sum. Cases, 25.—Reid.

FORECLOSURE. — See MORTGAGE, 16 *et seq.* 97 *et seq.*

FOREIGNER.—See ALIEN, *passim.*

FOREIGN TERRITORIES, OFFENCES COMMITTED IN.—See CRIMINAL LAW, 253, 254. 313 *et seq.*

FOREST, RIGHT OF. — See BANKAR, 1.

FORFEITURE.

1. A piece of land was held to be forfeited, on account of a serious affray between two claimants to it, under the provisions of Sec. 6. of Reg. XLIV. of 1793. *Pran Kishen Dutt* v. *The Collector of the Twenty-four Pergunnahs.* 6th Jan. 1825. 4 S. D. A. Rep. 3.—Martin.

FORGERY.—See CRIMINAL LAW, 255 *et seq.*

FOUJ SERÁNJÁM.—See LAND TENURES, 15.

FRAUD.

I. GENERALLY, 1.

II. STATUTE OF FRAUDS.—See STATUTE, 11.

I. GENERALLY.

1. A suit was filed against the respondent, as heir to his father deceased, to recover from him the amount of four respondentia bonds passed by the father to the appellant for money advanced on a trading voyage: the claim was clearly proved, but the appeal was dismissed on the respondent subsequently confessing that it was a collusive one, made with a view of defrauding other creditors of his father out of the assets left. The Court also

ordered that the appellant should be prosecuted at the Sessions for forging the bonds on which he sued. *Raeechund Poorshotum* v. *Moolla Muhmood Hashum; and Myaram Dyaram* v. *The Estate of Moolla Hashum.* 9th June 1813. 1 Borr. 48, 49.—Sir E. Nepean, Brown, & Elphinston.

2. Gross fraud and imposition are not to be imputed upon mere suspicion; and unless the charge be proved, a party cannot be released from an agreement entered into by their own solemn act. *Rajundee Narain Rae* v. *Bijai Govind Sing.* 20th Dec. 1839. 2 Moore Ind. App. 181.

FRAUDULENT ALIENATION.

—See STATUTE, 5.

FREIGHT.—See SHIP, 8, 9. 13, 14.

FUNERAL RITES.

I. OF HINDÚS, 1.
II. OF SIKHS, 10.
III. OF PÁRSÍS, 12.

I. OF HINDÚS.[1]

1. The mere act of performing the funeral rites of a deceased Hindú can give no title of succession without proof of right.[2] *Duttnaraen Sing* v. *Ajeet Sing and others.* 14th Feb. 1799. 1 S. D. A. Rep. 20.—Cowper.

2. Where a man, who had been expelled from his Cast (*Rajputs*) for the improper performance of the funeral ceremonies of his aunt, filed a suit against the Cast for damages, the Court decreed, that when he had performed the ceremonies required he should be re-admitted to the Cast, but not before. *Ghelajee Nana Bhaee* v. *Umur Singh and others.* 19th Feb. 1812. 1 Borr. 389.—Crow & Day.

3. The eldest son of a deceased Hindú shall, according to the Shastra, make all expenses consequent upon the death of his father, and deduct the amount from the estate, dividing the balance equally among the other sons.[3] And where the widows of a younger son of a Hindú deceased having seized the estate left by him, and the elder brother sued them, and obtained a third share of the whole, *minus* the sums laid out by the widow and younger son on the funeral expenses; the elder son then sued for recovery of what he had laid out for the same purpose; and it was held that he was entitled to two-thirds of the amount expended by him. *Rookhminee and another* v. *Tooeeram.* 27th May 1814. 1 Borr. 124.—Sir E. Nepean, Brown, & Elphinston.

4. Performance of funeral ceremonies belongs exclusively to the eldest son, who must celebrate them out of the common property; and should a younger son take upon himself to perform them when his brother was present, he could not be allowed remuneration or deduction out of the estate. *Laroo* v. *Manikchund Shamjee.* 3d July 1818. 1 Borr. 418.—Elphinston, Keate, & Sutherland.

5. The funeral expenses of a Hindú widow are chargeable on the share or estate of her late husband, and not against her daughter, on the pretence

[1] For the customs of various Casts in the performance of funeral rites, see Steele App. 49.

[2] In this case the claim of the appellant, grounded on the circumstance of his father having performed the obsequies, as he alleged, of an uncle who died childless, was founded on passages of Hindú law, which intimate that the succession to the estate and the right of performing the obsequies go together. But those passages do not imply that the mere act of celebrating the funeral rites gives a title to the succession, but that the successor is bound to the due performance of the last rites for the person whose wealth has devolved on him.—Coleb., see 3 Coleb. Dig. 545, 546.

[3] 3 Coleb. Dig. 545. May. c. iv. s. viii. 29. 1 Str. H. L. 170. 2 Do. 285.

of her inheriting the *Stridhana* of her mother. *Sheolal* v. *Ichha.* 17th Feb. 1820. 1 Borr. 429.—Elphinston, Romer, & Sutherland.

6. One of three persons, each entitled to inherit equal shares of certain property, had taken possession of the property under a will of the last incumbent, and had expended thereout certain monies for his obsequies. On the will being declared invalid, and a partition decreed, such expenses were directed to be taken out of the whole estate previous to the division. *Hureewulubh Gungaram* v. *Keshowram Sheodas.* 26th Feb. 1822. 2 Borr. 6.—Romer.

7. A grandson through a deceased daughter is entitled to perform religious ceremonies for the benefit of the soul of his deceased grandfather, on the failure of a trustee, in preference to a daughter, who is a childless widow, these two being the only issue of the deceased.[1] *Sibchunder Mullick* v. *Sreemutty Treepoorah Soondry Dossee and others.* 20th Oct. 1842. 1 Fulton, 98.

8. The eldest son of the eldest daughter of a Hindú dying and leaving four daughters him surviving, is entitled to perform the *Shrád* of the deceased. *Sandial* v. *Maitland.* 29th July 1844. 1 Fulton, 475.

9. A bequest of a sum of money for the performance of the annual *Shrád* will be upheld. *Ib.*

II. Of Sikhs.

10. Semble, By the Sikh law, if a man die, leaving a son, or an adopted son, such son must perform all the funeral ceremonies; but if he leave no son, then the widow must perform such ceremonies. *Doe dem. Kissenchunder Shaw* v. *Baidam Beebee.* Jan. 1815. East's Notes. Case 14.

11. Semble, By the Sikh law, a widow who is a *Pardah* woman may appoint a *Mukhtár* to conduct the ceremonies of her Cast; but it seems that the touching the body and lighting the pile at her husband's funeral must be done by the widow in spite of *Pardah.* *Ib.*

III. Of Pársís.

12. Semble, Among the Pársís any person may stand up and perform the *Wutumna* on the third day after death, without prejudice to the title of the heir. *Nawee Buhoo* v. *Peshtungee Loola Bhaee.* 15th Dec. 1802. 1 Borr. 1.—Duncan, Cherry, & Lechmere.

13. And where one of two adopted sons of a Pársí asked permission of the other to be allowed to perform the *Wutumna*, it was held to be an acknowledgment by him of the other's right to inherit. *Ib.*

FURZEE.—See Farzí, *passim.*

FUTWA.—See Criminal Law, 271 *et seq.*

GAMING.

I. Generally, 1.

II. Statute of.—See Statute, 7 *et seq.*

I. Generally.

1. A wager was made between the plaintiff and the defendant on the following event; viz. the average price of one chest of Patna opium of the opium to be sold at the first public Government sale of opium to take place at Calcutta next after the making of the wager, to be calculated according to the actual price which the whole amount of opium which should be sold at such first public Govern-

[1] Menu, B. ix. v. 136. Dáya Bh. c. xi. s. ii. 17. s. iii. 3. Mit c. ii. s. iii. 6. Dáya Cr. San. c. i. s iii. 5. May. c. iv. s. viii. 13.

ment sale should be sold for and realize, the plaintiffs agreeing to pay the difference between such average price and a certain sum stated in the plaint if the average price were below the stated sum, and the defendant agreeing to pay the difference if the average were above the stated sum; it was held that such wager is illegal, tending to interfere with the price of a vendible commodity in the market, and as being, therefore, contrary to sound policy. *Ramlall Thakoorseydass and others* v. *Soojamull Dhondmull.* 5th March 1847. Perry's Notes. Case 18.—(Sir E. Perry, J., dissent.)

GANG ROBBERY.—See CRIMINAL LAW, 184 *et seq.*

GANGAPUTRA.—See CONDUCTOR OF PILGRIMS, 2.

GHATWÁL.—See INHERITANCE, 218.

GHATWÁLÍ.—See INHERITANCE, 218.

GHAZB.—See FORCIBLE DISPOSSESSION, *passim.*

GIFT.

I. HINDÚ LAW.
1. *Generally*, 1.
2. *By Widows*, 6.
3. *Of Shares*, 17.
4. *Deed of Gift*, 21.
(*a*) *Validity and Operation*, 21.
(*b*) *Deed of Religious Gift*, 30.
5. *Possession*, 37.
6. *Verbal Gift*, 38.
7. *Revocation*, 41.
8. *Of Ancestral Property.—See* ANCESTRAL ESTATE, *passim.*

II. MUHAMMADAN LAW.
1. *Generally*, 42.
2. *Definiteness*, 47.
3. *Confusion*, 51.
4. *Possession*, 54.
1. *Generally*, 54.
2. *Under Deeds.—See infra*, 63 *et seq.*
5. *Revocation*, 60.
6. *Deed of Gift*, 63.
7. *By the Imámiyah Doctrine*, 81.
8. *Of Undivided Estate.—See* ANCESTRAL ESTATE, 41.

III. IN THE SUPREME COURTS, 83.

IV. IN THE COURTS OF THE HONOURABLE COMPANY.—See DEED, 20.

I. HINDÚ LAW.

1. *Generally.*

1. Semble, A gift by a husband of property to his first wife, he being about to marry a second, in order to satisfy her in all respects, is her *Stridhana*[1], and, if moveable, may be sold by her during her life, or disposed of at her death; but if immoveable[2] she cannot dispose of it during her lifetime, and it will descend at her death to her children, husband, father, mother, &c. She may sue her husband for such property as for a debt, and neither he nor relations have any power over it. *G.* v. *K.* 1794. East's Notes. Case 129.

2. Judgment was given in favour of an appellant who claimed to recover a *Talook* (sold by the Sheriff of

[1] 3 Coleb. Dig 558. 561, 562, 563. 570. 573. *et seq.* Dáya Bh. c. iv. s. i. 13. Dáya Cr. San c. ii. s. ii. 15. 1 Str. H. L. 30. 53. 2 Do. 59. Mit. c ii. s. xi. 1. 34, 35. May. c. iv. s. x 3. Steele, 37. 72.

[2] 3 Coleb. Dig. 575, 576. Dáya Bh. c. iv. s. i. 20. 23. Daya Cr. San. c. ii. s. ii. 31. Mit. c. i. s. i. 20. 1 Str. H. L. 27. 2 Do. 19. 21. May. c. iv. s. x. 8, 9. 1 Macn. Princ. H L. 40, note. 2 Do. 35. 122. 215. 259 Steele, 42.

Calcutta, as part of his father's estate) on proof of a previous gift of it made to him by his father. *Anunchund Rai* v. *Kishen Mohun Bunoja.* 4th Dec. 1805. 1 S. D. A. Rep. 115.—H. Colebrooke & Harington.

3. Moveable effects given to a relation from motives of affection cannot be claimed again. *Mt. Umroot* v. *Kulyandas.* 5th July 1820. 1 Borr. 284.—Hon. M. Elphinstone, Colville, Bell, and Prendergast.

4. According to the law of Benares, the gift of property to a brother's son is valid, notwithstanding the existence of a daughter, provided the property be undivided. By Bengal law it would be valid whether the property were divided or undivided. *Baboo Sheodas Narain* v. *Kunwul Bas Koonwur.* 5th July 1823. 3 S. D. A. Rep. 234.—Goad & Dorin.

5. A gift of property to a woman by her relation is her *Sudayica*, or gift from affectionate kindred, and as such is at her entire disposal.[1] *Ib. Gosaien Chund Kobraj* v. *Mt. Kishenmunnee and another.* 8th July 1836. 6 S. D. A. Rep. 77.—Halhed.

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2. *By Widows.*[2]

6. In a claim under a deed of gift executed by the widow of a Hindú *Zamíndár* of Bengal, who died childless, for the *Zamindári* formerly possessed by him, which at his death devolved on the widow, it was held that the widow could not alienate the estate, which at her death must pass to the husband's heirs. And the plaintiff, a collateral relative of the husband, having shewn that he was heir-at-law, judgment was passed on this ground in his favour, or, rather, in favour of his daughters, his heirs, he having died before the suit was decided.[3] *Mahoda and another* v. *Kuleani and others.*[4] 14th March 1803. 1 S. D. A. Rep. 62. — H. Colebrooke & Harington.

7. A gift by a widow after the death of a son adopted by her, without issue, to the son of her younger daughter, was set aside as prejudicial to the rights of a daughter, who at the time of the gift had not, but afterwards had, male issue.[5] *Mt. Bijya*

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[1] 3 Coleb. Dig. 577. Dáya Bh. c. iv. s. i. 22. 1 Str. H. L. 26. May. c. iv. s. x. 3. Mit. c. ii. s. xi. 4—7.

[2] The subject of Gift by a Hindú widow is so intimately connected with that of the estate taken by her in her late husband's property, and the alienation of property by her generally, that I refer, at the risk of repetition, to the titles, Hindú Widow, 11 *a et seq.*, Inheritance, 48 *et seq.*, and the notes thereto.

[3] A reference to the following passages of *Jímútá Váhana* will confirm the correctness of the grounds on which the decision of this cause rested. (Dáya Bh. c. ii. s. i. 56. 59. and s. vi. 9. and *Śrikrishna's* note in the summary or recapitulation, Dáya Bh. at the end of c. xi. s. vi.) It has been declared by the law officers of the Courts, in other suits, that a widow's gift of the estate to the next heir is good in law, though she be restrained from making any other alienation of it. This opinion, though not founded on any express passages to that effect in books of authority, seems reasonable, as such a gift is a mere relinquishment of her temporary interest in favour of the next heir. It may, however, happen, that the person who would have been entitled to take the inheritance at her decease may be different from the one who obtained it under the gift or relinquishment to him as presumptive heir; and if the title be either preferable or equal, it may invalidate such gift in whole or in part.—Coleb.

[4] See this case fully discussed in Macn. Cons. H. L. 305 *et seq.*

[5] An intricate question of Hindú law was determined in this case, relative to the power of a widow, on whom property had devolved by the death of her husband, or of her son, to alienate it by gift, without the consent of the heir-at-law. The Pandits differed in opinion, and the difference arose from the following considerations. The succession to property which has devolved on a widow passes to daughters, for the sake of the male issue which they have, or may have. The son of the youngest daughter (the eldest being then childless) was, therefore, the person contemplated in the inheritance. A gift to him might be deemed beneficial to the deceased, and, consequently, legal; or the donation in favour of him who finally was to be heir in regular succession could not be considered as made against the consent of heirs, since his consent to a gift in his own favour might be assumed. In

Dibeh v. *Mt. Unpoorna Dibeh.*[1] 26th Sept. 1806. 1 S. D. A. Rep. 162.—H. Colebrooke & Fombelle.

7 *a.* A widow cannot, by the law of Mithila, Bengal, or Benares, make a gift of her deceased husband's immoveable property without the consent of his heirs, except for certain special reasons; viz. funeral expenses, her own subsistence, and the like. *Sreenarain Rai and another* v. *Bhya Jha.* 27th July 1812. 2 S. D. A. Rep. 23.—Harington & Stuart.

7 *b.* But according to the Mithila law, she can consume, or give, or sell, in her lifetime, the moveables which may have devolved upon her by the death of her husband; but she has not, by such law, any power over the immoveables beyond frugal enjoyment.[2] *Ib.*

8. A widow cannot, under any circumstances, alienate the whole landed estate devolved on her by the death of her husband, nor can she alienate a part (except under special circumstances) without the consent of all her late husband's heirs, notwithstanding she may have obtained the consent of the nearest heirs; and a deed of gift executed by her in favour of a stranger, to be valid, must be attested by all her husband's heirs as consenting parties. *Mohun Lal Khan* v. *Ranee Siroomunnee.* 31st Aug. 1812. 2 S. D. A. Rep. 32.—Harington & Fombelle.

9. Semble, A widow may give away in her lifetime personal property derived from her husband, but she cannot will it away.[3] *Jushadah Raur* v. *Juggernaut Tagore.* 12th Feb. 1816. East's Notes. Case 47.

10. Semble, Where a widow gave up property by her will to her nephew during her lifetime, on condition that he should maintain her during her life, and defray her funeral expenses, and keep the balance himself, it was held not to be a religious charitable gift. She might have made a gift, not only of moveable but immoveable property, to *Brahmans*, and the deed would have been valid and legal[4]; but in this instance the gift was held to have been made through partiality, and therefore improper: if she gave away the personal property, the gift

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the present instance the presumption was, that a son had been adopted by the widow, and that the estate consequently reverted to her on his decease without issue: it was, therefore, a case of property devolving on a mother by the decease of her son, and it was questioned whether a woman was restricted from alienating land so inherited by her. The law officers of the Sudder Dewanny Adawlut dissented from the doctrine which maintains the woman's right of alienation, and held that the rules concerning property devolving on a widow equally affect property devolving on a mother. In both cases the woman is restricted from alienating unless for her necessary subsistence, or for pious purposes beneficial to the deceased, and that only to a moderate extent. A gift of the whole property does not fall within the exception. Nor could this donation be considered as one made in favour of the heir-at-law, the immediate heirs being the daughters, and the exclusion of the further issue, which might be born between the period of the gift and that of the woman's demise, being illegal. They were therefore of opinion that the gift was void, and that the succession devolved on the two daughters, both of whom had male issue at the time of their mother's decease.—Coleb. And see the Dáya Bh. c. xi. s. i. 64. 2 Str. H. L 408—410. 2 Macn. Princ. H. L. 48. 299. Steele, 42.

[1] See this case fully discussed by Sir F. Macnaghten in his Consid. H. L. 310. *et seq.*

[2] This is according to the Chintámani and the Retnacárá. According to the law of Bengal the widow has only an usufructuary interest in the moveables as well as the immoveables. See Inheritance, Pl. 51, 52. notes. Dáya Bh. c. xi. s. i. And see 2 Str. H. L. 408., where Colebrooke upholds the power of a widow over moveables in a case occurring in Vizagapatam.

[3] Such a gift would only be valid with the consent of the heirs of her late husband, unless such personal property were her *Stridhana;* and under such circumstances, or in the absence of heirs, the Supreme Courts would, I imagine, uphold a will as equally valid with a gift made by the widow in her lifetime. There is no distinction in the books from which the conclusion arrived at by the Pandits in this case, and mentioned in the above *Placitum*, can be drawn. It is to be observed that this case was decided without argument at the bar.

[4] *Sed quære de hoc.*

was valid, provided it was not of the nature of obstructed heritage.[1] *Mt. Umroot* v. *Kulyandas.* 5th July 1820. 1 Borr. 284.—Hon. M. Elphinstone, Colville, Bell, & Prendergast.

11. The widow of a Hindú who died without children was held to have the power of making a gift of a portion of her late husband's property for the payment of his debts, for the support of his family, for her own subsistence, and for the performance of his exequial rites. She may also make a gift, proportioned to the extent of her late husband's property, for the benefit of his soul. And if these objects (payment of debts, &c.) cannot be effected without the sale of all his property, she has the power of disposing of the whole of it; but she may not alienate, by gift or sale, the whole or any part of his property, solely at the suggestion of her own will and pleasure.[2] *Ramchunder Surma* v. *Gungagovind Bunhoojiah.* 1st Feb. 1826. 4 S. D. A. Rep. 117. —Ross.

12. A Hindú widow has the power of alienating, by gift, from one to three-sixteenths of her late husband's property, for the benefit of his soul. *Ib.*

13. Where a party claimed to retain possession of certain lands, on the plea of gift from a Hindú widow, by whom they had been taken on her husband's death on a division among the heirs; it was held that the plea was not proved, and that, at all events, the gift would have been invalid without the consent of the heirs. *Bindrabun Chund Rai and others* v. *Bishun Chund Rai.* 25th April 1826. 4 S. D. A. Rep. 143.—Leycester & Dorin.

14. A Hindú widow has no right, by the law of Mithila, to alienate any part of her late husband's estate, except for religious purposes; and the daughter of the deceased, whose right of inheritance is weaker, that is, who only succeeds on failure of the widow, *à fortiori* has no power to alienate, by gift, her ancestral property, to the detriment of the other heirs of her father. *Mt. Gyan Koonwur and another* v. *Dookhurn Singh and another.* 3d Feb. 1829. 4 S. D. A. Rep. 330.—Rattray.

15. By the Hindú law, as current in Bengal, the gift by a widow of the property derived from her late husband to her daughter (being the next in succession) and her daughter's husband is valid. *Beer Inder Narain Chowdree and another* v. *Sutbhoma Dibbea and another.* 6th Aug. 1835. 6 S. D. A. Rep. 36.—Braddon.

16. And Semble, That if it should be considered that such daughter's husband had any right to separate from his wife in the gift, and he should happen to be a *Brahman*, the legality of that right may be upheld as a gift made to a *Brahman.* *Ib.*

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3. *Of Shares.*[3]

17. A Hindú of Benares died, leaving three sons, and afterwards the first son died, leaving a son, and then the second son died, leaving two widows, and the son of the first son sued the third son for a partition. It appeared that the second son had executed a deed of gift in favour of his widows, who had also received written acknowledgments from both

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[1] May. c. iv. s. iv. 2.

[2] Dáya Bh. c. xi. s. i. 2. 56, 57. 61, 62, 63. Dáya Cr. San. c. i. s. ii. 3. 5, 6, 7. Macn. Consid. H. L. 26. 314. 1 Str. H L. 246, 247. 2 Do. 251. 408. 410. 1 Macn. Princ. H. L. 19. 2 Do. 211. 244. 259. Steele, 69 note †. And see, *infra*, Hindú Widow, 33 *et seq.* for the circumstances under which a widow may alienate property for the payment of her late husband's debts.

[3] On the subject of alienation and gift of property, ancestral or undivided, by coparceners, See 1 Coleb. Dig. 455. 2 Do. 56. 104, 105. 215. 519. Dáya Bh. c. ii. 27, 28. Dáya Cr. San. c. xi. 1 Str. H. L. 200. 2 Do. 343. 348, 349. 433. Mit. c. i. s. i. 27—30. 32. 1 Macn. Princ. H L. 5; 2 Do. 212. 220; Steele, 210, 211. & App. A. 39.

the coheirs, which circumstance had been withheld from the knowledge of the Court. Held, that though, by the law of inheritance, the widows were only entitled to maintenance, under the documents above mentioned they acquired a special right, and their husband's share was accordingly adjudged to them. *Duljeet Sing* v. *Sheomunook Sing.* 7th Sept. 1802. 1 S. D. A. Rep. 59.—H. Colebrooke & Harington.

18. By the Hindú law, as current in Bengal, a co-parcener may give or alienate his own share of joint property. A gift by *A* to his son of a *Talook*, which he had received from his father while sole *Zamíndár*, was upheld by the Court; as the gift of the *Talookdárí* tenure, which is distinct from the *Zamíndárí* right, and usually held as a dependency, paying rent to the *Zamíndár*, did not destroy the right of the brother of *A* in the *Zamíndárí*.[1] *Anundchund Rai* v. *Kishen Mohun Bunoja.* 4th Dec. 1805. 1 S. D. A. Rep. 115.—H. Colebrooke & Harington.

19. According to the law, as current in Bengal, the gift of joint and undivided property, to the extent of the donor's share, is valid. *Kounla Kant Ghosal* v. *Ram Huree Nund Gramee.* 11th Jan. 1827. 4 S. D. A. Rep. 196.—Scaly.

20. Semble, That in the case of three joint donees with undefined shares, according to the Hindú law, equal interests must be assumed. *Baboo Sheo Manog Singh* v. *Baboo Ram Prakas Singh.* 20th July 1831. 5 S. D. A. Rep. 145.—Turnbull.

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[1] Though from the terms of the deed of gift by which the *Talook* was transferred to the appellant and his heirs, in full property, the Court considered the appellant entitled to have it separated from the *Zamíndárí*, and to hold it independently of the *Zamíndár*, under the provisions of Reg. VIII. of 1793, and accordingly instructed the appellant to take measures for its separation.—Coleb. And see *supra*, p. 40, note 1. also the authorities mentioned in the previous note, as to alienation by co-parceners.

4. *Deed of Gift.*

(*a*) *Validity and Operation.*

21. In a claim, by the respondent, to recover his estate from the appellant, his adopted son, who had been entrusted with the care of it, a deed of adoption and gift, pleaded by the appellant, was construed not to entitle him to possession during the life of the respondent, and judgment was therefore given in favour of the claim.[2] *Sidh Naraen* v. *Futeh Naraen.* 16th Dec. 1805. 1 S. D. A. Rep. 118.—H. Colebrooke & Harington.

22. Where *A* and *B*, the heirs of a *Zamíndár*, claimed part of his estate from *C*, who had possessed himself of it, under an alleged deed of gift from the widow of the *Zamíndár*; it was held that the deed of gift was invalid, as the widow had only a life interest in the estate; but *C*'s possession was upheld on proof that he had been adopted by the widow under a written authority from her husband for that purpose. *Nundkomar Rai and another* v. *Rajindurnaraen.* 2d Dec. 1808. 1 S. D. A. Rep. 261.—Harington & Fombelle.

23. Semble, That granting there be a deed of gift and credible witnesses, no right can thereby be produced, if seisin of the property have

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[2] This case turned entirely on the construction of the terms of a special deed, which was considered by the Court to be a deed of adoption, with a special provision for the adopted son's right of succession, or of participation in the inheritance. The construction being thus determined against the appellant, his plea of adverse possession during more than twelve years was of course set aside, as he had not possession as proprietor under the deed, but as manager, for the greatest part of the period stated. The Court's determination on the construction of the deed equally set aside the appellant's second plea, that the respondent having retired from worldly affairs was incompetent to retract a donation. The deed was not considered to confer an immediate gift, and the respondent was not shewn to have entered into any devout order, which would constitute a civil demise, and give the defendant a right by inheritance as adopted son.—Coleb.

not been given.[1] *Sham Singh* v. *Mt. Umraotee.* 28th July 1813. 2 S. D. A. Rep.74.—H. Colebrooke & Stuart.

24. Where a *Hibeh námeh* for property, real and personal, had been granted by one party to another, and an *Ikrár námeh* had been thereupon executed by the donee; it was held that the infringement by the donee of the terms of that engagement, and his death without possession having been obtained, invalidated any claim by his heir under the deed in question.[2] *Ram Buksh* v. *The Ranee of Raja Jeswunt Sing.* 30th Dec. 1816. 2 S. D. A. Rep. 220.—Ker & Oswald.

25. A deed of gift declaring a person entitled to as much drinking water as he required from a tank belonging to houses given by the same deed to another person, and binding the former to pay half the repairs of such tank, does not give him or his heirs any right of property in the houses given to the latter, who is at liberty to sell them, with a reservation of the former's right. *Lukmeeram and others* v. *Khooshalee and another.* 17th March 1818. 1 Borr. 412.—Elphinston & Sutherland.

26. A Hindú widow executes a testamentary deed of gift in favour of her four daughters, granting them equal shares of her landed property, to be entered on by them after her death. *B* & *C*, two of the daughters, dying during the life of *A*, the daughter of *B* sues *D* and *E*, the surviving daughters, for a fourth of the property, in right of her mother. Held, that the right of *B* lapsed by her death, in the lifetime of her mother, and as she had never been seised of the share her daughter could not claim any share, under the deed, of the property, through her. *Mt. Abea and another* v. *Esur Chund Gungolee.* 2d April 1819. 2 S. D. A. Rep. 290.—Fendall & Goad.

27. Where a Hindú, having no son, executed a deed, whereby he granted to his senior widow the whole of his acquired property, in the event of no son being born, but in the event of the birth of a son the property was to go to him, and a son was born, but died before his father; it was held that the property in question became, under the deed of gift, vested in the son immediately on his birth, and on his death reverted to his father as his heir. On the death of the father his widow took a life interest therein, without power of alienation.[3] *Kishen Govind* v. *Ladlee Mohun Thakoor.* 30th Aug. 1819. 2 S. D. Rep. 309.

28. A claim by the legal heirs was adjudged, though opposed by an alleged deed of gift, it being doubted whether that deed was executed at all, or whether, at the time of its execution, the donor, from extreme old age, was in his sound mind. *Ram Narayun Dutt and others* v. *Mt. Sut Bunsee and others.* 23d June 1824. 3 S. D. A. Rep. 377.—J. Shakespear & Martin.

28 *a.* Semble, A deed of gift may be valid, though clogged with certain conditions, and a person may convey all his property to another, though there be a stipulation in the deed that the donor should be maintained by the donee during his lifetime, and that the exequial ceremonies of the former should be performed by the latter, in consideration of the gift. *Ib.*

29. A Hindú of Bengal may lawfully convey all his property, by a deed of gift, to his brother, notwithstanding that he have a wife living.[4] *Tarnee Churn* v. *Mt. Dasee Daseea.* 31st July 1824. 3 S. D. A. Rep. 397.—C. Smith & Ahmuty.

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[1] This is according to the Viváda Chintámaní and other Mithila books.

[2] 1 Str. H. L. 32; 2 Do. 427.

[3] The respondent appealed from this decision to the King in Council, but having neglected, for nearly four years, to take any steps towards prosecuting the appeal, it was dismissed on the 21st of Aug. 1823.

[4] Dáya Bh. c. ii. 31 & Note.

(*b*) *Deed of Religious Gift.*

30. Property bequeathed in *Krishnarpan* by a childless widow, in favour of her sister's sons, was maintained as against the legal heir to the same property; but the donees were declared incompetent to take or disburse sums set apart for the performance of the donor's funeral ceremonies, which could only be performed by the legal heir. *Jugjeevun Nuthoojee and others* v. *Deosunkur Kaseeram.* 27th Aug. 1812. 1 Borr. 394.—Crow & Day.

30 *a*. A *Krishnarpan* cannot be annulled, nor property assigned by it resumed. *Ib.*

31. A *Sivarpan* was held to be void where a previous decision of the Court of Appeal had fixed the succession of the property attempted to be conveyed, and had declared that the present possessor had only a life interest in it. Alienation of the property, therefore, by such present possessor was clearly illegal. *Umbashunkur Mungulram and others* v. *Tooljaram Duyaram.* 27th July 1813. 1 Borr. 400.—Crow & J. Smith.

32. A widow of a Hindú, who died without male issue, may give away her husband's property in *Krishnarpan*, notwithstanding the existence of her sister's son, provided she herself have no son, or other near heir of her own, whose rights would be affected by such gift of their inheritance to another.[1] *Kupoor Bhuwanee* v. *Sevukram Seoshunkur.* 26th March 1816. 1 Borr. 405.—Prendergast, Keate, & Sutherland.

33. In a dispute between the widow of a son and the sons of a daughter of a Hindú deceased, whose estate the grandsons claimed under a *Krishnarpan*, executed in their favour by their grandfather, the Court set aside the *Krishnarpan* in favour of the widow (or daughter-in-law). It may be remarked that in this case the evidence brought forward to prove the execution of the *Krishnarpan* was extremely unsatisfactory. *Muha Lukmee* v. *The Grandsons of Kripashookul.* 29th July 1817. 2 Borr. 510. — Prendergast & Sutherland.

34. *A*, *B*, and *C* laid claim to the estate of a deceased Hindú, *A* being his *Kul Gur*, and claiming under a *Krishnarpan*, *B* being his widow's niece, and claiming under a will of the widow, and *C*, a great grandson, in a different branch, of the person from whom the estate came, claiming as heir and nearest relation. It was held that *A* was best entitled to the property, as the right of possession passed away by the deed from the donor to the donee, and consequently the heir of the donor had no longer any right to bequeath it to *B*, and the right of *C* to the property was clearly annulled by the *Krishnarpan*. *Keshoor Poonjiyar* v. *Mt. Ramkoonwur and another.* 11th June 1822. 2 Borr. 314.—Romer.

35. A *Krishnarpan* executed by a Hindú, to take effect after the death of his widow, need not be signed by the widow. *Ib.*

36. Property given to certain persons by a *Krishnarpan*, to take effect after the death of the widow of the donor, cannot be made liable for her funeral expenses. *Ib.*

36 *a*. A *Krishnarpan* was held to be valid, although the donor lived and ate in the same house as the donee (his maternal grandson) till his death, as it did not appear that he supported himself out of any of the property given in *Krishnarpan*, he having other means of subsistence. *Kaseeram Kriparam* v. *Mt. Ichha.* 24th

[1] May. c. iv. s. viii. 4. This is a striking case, and quite conclusive as to the power of a widow to alienate property. It was not the claim of an heir to recover property already given away, and in the possession of the donee, but the latter sued the legal heir, enjoying his full rights over the property, strengthened by possession, annulled those rights, and ousted him in virtue of a deed of gift.—Borr

July 1823. 2 Borr. 502.—Romer, Sutherland, & Ironside.

5. *Possession.*[1]

37. Semble, A near relation may be in possession of a gift, for any period, without its operating to transfer the right of property from the proprietor to the possessor. *Baboo Sheodas Narain* v. *Kunwul Bas Koonwur and others.* 5th July 1823. 3 S. D. A. Rep. 234.—C. Smith.

37 *a.* Semble, Possession of a dwelling house, in gift, is when the donor leaves the house and takes his goods and chattels along with him. *Meyajee Alleebhoy* v. *Metha Nuthoo and another.* 8th May 1832. Sel. Rep. 80.—Ironside, Barnard, Baillie, & Henderson.

37 *b.* Semble, Possession of any other house than the donor's dwelling is made over in gift by giving the donee the key of the house, having first taken out all the chattels. *Ib.*

37 *c.* Semble, Possession of iron and copper vessels, jewels, cattle, and chattels, is taken by the donor's making them over to the donee, and his taking them away. *Ib.*

37 *d.* Semble, If things given by a deed of gift were previously in the donee's possession, it is not requisite that possession should be given anew. —*Ib.*

37 *e.* Semble, Those things which have been in possession are rightly considered a gift, but not those of which possession has not been given. *Ib.*

6. *Verbal Gift.*

38. Semble, According to the law as current in Mithila, a verbal gift of immoveable property is invalid, where the donee has never been in the possession of the property. *Sham Singh* v. *Mt. Umraotee.* 28th July 1813. 2 S. D. A. Rep. 74.—H. Colebrooke & Stuart.

39. Semble, Where a Brahman has been heard to express himself openly, in the presence of his family, in favour of his sister's sons succeeding to his fortune, either by nuncupative will or present gift, according to what might be the construction of the words employed, it would be considered by the Court to be a good disposition of his property, although it is contrary to Hindú law for a Brahman to adopt his sister's son;[2] but the Court would not give credit to vague and unsatisfactory evidence of such expression of will, or gift, even where the nephew had performed his uncle's funeral ceremonies, the latter leaving a childless widow. *Doe dem. Kora Shunko Takoor* v. *Beebee Munnee.* 24th Nov. 1815. East's Notes, Case 20.

40. A verbal gift by a Hindú, who was upwards of eighteen years of age, made the day before his death, he being at the time in full possession of his senses, was held to be valid.[3] *Gosaien Chund Kobraj* v. *Mt. Kishenmunnee and another.* 8th July 1836. 6 S. D. A. Rep. 77.—Halhed.

7. *Revocation.*

41. If a Hindú execute to another Hindú a deed of assignment and gift, without any stipulation or condition, the assignor cannot revoke such deed.[4] *Mohunt Sheo Suhye Doss.* v. *Mohunt Sookh Deo Doss.* 25th Jan. 1841. 7 S. D. A. Rep. 4.—Tucker & D. C. Smyth.

II. Muhammadan Law.[5]

1. *Generally.*

42. A gift in lieu of dower is not

[1] 2 Coleb. Dig. 170; 1 Str. H L 32; 2 Do. 427.

[2] See *supra*, Adoption, pp.18,19. Pl. 59.61. & Notes

[3] 2 Str H. L 426, 427.

[4] But an excessive or illegal gift may be retracted. Menu B. viii. v. 4 212, 213.

[5] The Muhammadan law of gift, according to the doctrine of the Sunniys, will be found in 3 Hed. 290 *et seq.* Macn. Princ. M. L. 50, 51, 52. 197 *et seq*

invalidated by the marriage, on occasion of which the dower was settled, proving illegal by the return of the wife's former husband, supposed to have been dead. *Newazee Feraush* v. *Mt. Atlussee and another.* 26th Nov. 1800. 1 S. D. A. Rep. 31.—Speke.

43. Where a Muhammadan had transferred, by gift, all the property in his possession to his wife, in lieu of dower, it was held that such gift did not bar an action against his estate, for property which had come into his hands as executor.[1] *Ruzia Begum* v. *Aka Moohummud Ibrahim.* 8th Aug. 1806. 1 S. D. A. Rep. 150.—H. Colebrooke & Fombelle.

44. Held, that notwithstanding the difference of opinion in the Muhammadan law books as to the effect of an invalid gift being conjoined with one that is valid, such gift is valid so far as regards the thing which is a fit subject of gift. *Shah Ghoolam Mohee-ood-deen Sahib Shootary* v. *Ruhmut-oon-Nisa Beebee and another.* Case 1 of 1820. 1 Mad. Dec. 254.—Harris & Græme.

45. In a gift of partible property, division is essentially necessary prior to delivery. *Mt. Khanum Jan* v. *Mt. Jan Beebee.* 13th Feb. 1827. 4 S. D. A. Rep. 210.—Leycester & Dorin.

46. Semble, There is no difference with regard to gift between the heirs of a Musulmán and a stranger. *Meyajee Alleebhoy* v. *Metha Nuthoo and another.* 8th May 1832. Sel. Rep. 80.—Ironside, Barnard, Baillie, & Henderson.

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2. *Definiteness.*

47. It was declared by the law officers that a gift of land, forming part of joint property, to be valid must be distinct, and the boundaries and extent of the property given be known.[2] *Jafier Khan* v. *Hubshee Bebee.* 31st March 1796. 1 S. D. A. Rep. 12.—Speke & Cowper.

48. To render a gift valid by the Muhammadan law, it is necessary that the subject of it be defined and distinct, and separated from all other property not intended to be conveyed, or which cannot lawfully be conveyed by gift: and where four out of twelve parts of certain property intended to be transferred were devoted to religious purposes, and which, therefore, could not legally be transferred by gift, it was held that the gift of the eight portions was invalid, as they were transferred simultaneously with the four portions, the transfer of which was illegal. *Meer Ubdool Kureem* v. *Fukhroonisa Begum.* 2d Aug. 1820. 3 S. D. A. Rep. 44.—C. Smith & Goad.

49. Held, that the Muhammadan legal objection of indefiniteness does not apply to a gift under which possession has been held for upwards of twelve years.[3] *Syud Shah Basit Ali* v. *Syud Shah Imamoodeen.* 19th

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[1] It appeared, from the opinions of the law officers, that a creditor could not have recovered against the wife from the assets which came into her hands by gift from her husband, but that, as he could have no power to give what was not his own, the donation of any property, not actually his, could be no bar to the suit. The Court, under this opinion, considered the amount of the property in the hands of the executor to be unalienable by him, and proper to be separated and deducted from the donation of his estate made by him in favour of his wife. The other point of Muhammadan law which came under consideration in the decision of the cause was the limitation of legacies to one-third of the testator's property, exclusive of funeral charges and debts.—Macn.

[2] 3 Hed. 291. 293.

[3] In the case of a gift made to two or more donees the interest of each must be defined, either at the time of making the gift, or on delivery. See Macn. Princ. M. L. 50. There was another objection against the gift in this case which was not noticed by the parties, but which would have equally operated against the appellant; namely, that the donor did not relinquish possession during his lifetime. Another suit between the same parties for the personal property was decided in favour of the respondent on the same grounds.—Macn.

Nov. 1822. 3 S. D. A. Rep. 176.—Goad & Dorin.

50. In the case of a gift, under the Muhammadan law, specification of the property is not requisite, where the gift comprises the whole property of the donor, and is made in favour of only one donee. *Mt. Saheebun* v. *Sheik Khoda Buxsh.* 10th Nov. 1835. 6 S. D. A. Rep. 44.—Rattray & Robertson.

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3. *Confusion.*

51. A gift is vitiated by confusion. *Mir Nur Ali* v. *Majidah and others.* 30th July 1831. 5 S. D. A. Rep. 136.—H. Shakespear & Sealy.

52. But, Semble, the Court will consider that a gift *for a consideration* is, in effect, a sale and purchase, and is not vitiated by confusion of property, or defect of possession, according to the Muhammadan law. *Sayud Husain Ali Khan* v. *Fiyaz Uddin Haidar.* 28th Nov. 1832. 5 S. D. A. Rep. 239.—Walpole.

53. The Muhammadan law recognizes a distinction between a gift *for a consideration* (*Hibeh-bil-iwaz*) and a gift *on consideration of a return* (*Hibeh ba shart-ul-iwaz*[1]); the latter is, the former is not, vitiated by confusion and non-possession. *ImdadAli* v. *Kadir Baksh and others.* 24th April 1833. 5 S. D. A. Rep. 296.—Walpole.

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4. *Possession.*

1. *Generally.*

54. Seisin of the donee is not requisite by the Muhammadan law, in order to render a *Hibeh-bil-iwaz*, or gift for consideration, valid. *Meer Nujeeb Ullah* v. *Mt. Kuseema.* 18th Nov. 1795. 1 S. D. A. Rep. 10.—Sir J. Shore, Speke, & Cowper.

55. In a suit for lands, to which the defendant pleaded a title under a gift from his wife, lately deceased, made some years previous to her death, the question was, whether there had been possession under the gift sufficient to give validity to the gift in Muhammadan law. Held, that delivery of seisin was sufficient, and continued possession was not necessary. *Jafier Khan* v. *Hubshee Beebee.* 31st March 1796. 1 S. D. A. Rep. 12.—Speke & Cowper.

56. The gift of a portion of landed property, without distinct allotment of it, and delivery of seisin to the donee, is not valid in Muhammadan law. *Azimoodeen* v. *Fatima Beebee.* 27th June 1799. 1 S. D. A. Rep. 24.—Cowper. *Kishwur Khan* v. *Jewun Khan.* 9th Aug. 1799. *Ib.* 25.—Cowper. *Casim Ali* v. *Furzund Ali.*[2] 27th Nov. 1805. *Ib.* 113.—H. Colebrooke & Harington.

57. Possession is an indispensable part of a gift, which is not valid without it. *Shekh Humeedood Deen* v. *Nuzurood Deen.* 19th Jan. 1824. 2 Borr. 648.—Romer.

58. Semble, A gift made at the point of death is not valid, even to pass one-third of the property, without possession being given. *Meyajee Alleebhoy* v. *Metha Nuthoo and another.* 8th May 1832. Sel. Rep. 80.—Ironside, Barnard, Baillie, & Henderson.

59. Under the Muhammadan law, seisin by the donee is essential to the validity of a gift. *Neermulee Beebee Chowdrain and another* v. *Assudonissa Beebee.* 20th April 1840. 6 S. D. A. Rep. 286.—Rattray & Lee Warner.

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[1] For the definition of this and the preceding kind of deed, see Maen. Princ. M. L. 217

[2] According to the Muhammadan law, as ascertained in this case, seisin, or possession by the donee, is indispensable to the complete effect and validity of the gift in his favour. Another point of law which came under consideration, but which did not influence the decision, is the validity of a joint gift without discrimination of shares. The authorities of Muhammadan law differ on this question, but the prevailing authorities admit the validity of such a gift. But it would not be valid for property included in, or inseparably attached to, that of another person (so as to be undefined).

5. *Revocation.*[1]

60. An unconditional gift, without consideration, is valid, though the donee be not of kin to the donor, and cannot be retracted where a transfer has been made by a donee to a third person, or where the donee has improved the gift, or where the donor and donee are spouses. *Shah Makdum Bakhsh* v. *Lutf Ali.* 26th April 1834. 5 S. D. A. Rep. 355.—Braddon & Robertson.

61. If, after the execution of a deed of gift, possession be also given, the gift cannot be revoked. *Mt. Bunnoo* v. *Mt. Hedayut and others.* 9th Jan. 1835. 6 S. D. A. Rep. 16.—Robertson & Stockwell.

62. If none of the legal obstacles to the resumption of a gift exist[2], the Civil Court, on application being made by the donor, will grant permission to resume the gift, and not call for evidence as to the cause of desire of resumption; and such permission given is legal and valid. *Sheik Jeetoo* v. *Mt. Buddun Bibi and another.* 7th Nov. 1837. 6 S. D. A. Rep. 189.—Braddon & Hutchinson.

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6. *Deed of Gift.*

63. The widow of a Musulmán claimed the estate of her husband, who died twenty-six years before, under a gift from him in lieu of dower (*Hibeh-bil-iwaz*), dated two years before he died. There was no possession on her part since his death; and her son, in the interval, by her direction, had sued and obtained judgment as heir to his father's estate. Such having been the case, the law officers held that, under the circumstances, the widow was estopped from claiming under a gift from her husband, though she might come in for her share as one of the heirs. *Meer Nujeeb Ullah* v. *Mussummaut Kuseema.* 18th Nov. 1795. 1 S. D. A. Rep. 10.—Sir J. Shore, Speke, & Cowper.

64. A deed of gift from a father to his minor son for property, of which possession was not delivered at the time of the gift, or during the father's life (about four years beyond the date of it), was held valid; for the son being a minor, it was presumed that the father was trustee for him. One-fourth of the property conveyed by the gift was adjudged to the son's widow, as his heir, in addition to her dower. *Newazee Feraush* v. *Mt. Atlussee.* 26th Nov. 1800. 1 S. D. A. Rep. 31.—Speke.

65. At the suit of a widow against the brother of her husband, for her husband's estate, under a deed making a gift to her of all his property in lieu of dower, it was adjudged that the widow was entitled to take under this deed all property possessed by the husband at the date of its execution, and, in the property subsequently acquired, had a right to share as an heir. *Musnud Ali* v. *Khoorsheed Banoo.* 14th Aug. 1801. 1 S. D. A. Rep. 52.—Lumsden & Harington.

66. A deed of gift by a woman to a minor, received into her family as an adopted son, for property of which possession was not delivered at the time of the gift, or during the life of the donor, who retained possession of it in behalf of the said minor, was held to be valid and complete in law, notwithstanding that the father of the said minor was alive; but a claim under that instrument to a portion of a joint undivided estate was rejected, the gift of such property being invalid according to the Muhammadan law. *Mt. Banoo Beebee* v. *Fukheroodeen Hosein.* 3d May 1816. 2 S. D. A. Rep. 180.—Harington & Fombelle.

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[1] 3 Hed. 300 *et seq.*

[2] The *Kází* stated that the legal obstacles to the resumption of a gift are seven: 1. The incorporation of an increase with the gift. 2. The death of either of the parties to the gift. 3. A return in consideration by the donee to the donor. 4. Alienation of the gift. 5. The parties being husband and wife. 6. Relation within the prohibited degrees of marriage. 7. Destruction of the thing given. And see 3 Hed. 301.

67. Where a deed was not in the form of a *Hibeh námeh*, and was in its language obscure, yet as it contained the words *dádeh shud*, "it was given" (by me), the deed was declared to be good and valid. *Moohummud Umeer Khan* v. *Jumadar Bucha Bhaee.* 9th Jan. 1822. 2 Borr. 179.—Romer.

68. Where a widow claimed for recovery of her late husband's effects from the widow of her stepson; the latter produced a deed of gift by the husband in her favour, in reversion from his own daughter, and an acquittance from the mother-in-law. It was held doubtful whether the deed of gift was not invalid, as not being followed by possession, or whether it might not come under the denomination of a will, as providing for the disposal of property. The majority of the authorities were against the validity of the deed, and the Court reserved the point, holding that the claim of the mother-in-law was untenable on account of the *Farikhkhatt.* *Noor Beebee* v. *Mt. Ruheema.* 28th March 1822. 2 Borr. 153.—Romer & Sutherland.

69. *A* filed a suit for the removal of a notice of mortgage laid by *B* on a house bestowed in gift by the former owner under a *Hibeh námeh* to *A*. *B* urged that the donee only held the house in mortgage of *B*'s ancestors; but failing to produce any documentary evidence in proof of the alleged mortgage, the *Hibeh námeh* (in which the former owner declared the house to be his, and which was proved to have been executed in a public manner many years back) was declared to be valid, and it was decreed that the notice of mortgage should be removed, and *B* restrained from all further molestation to *A*'s rights of ownership. *Shurfood Deen and others* v. *Shumsood Deen Shagur.* 30th May 1822. 2 Borr. 269.—Romer, Sutherland, & Ironside.

70. Where a widow claimed, under a *Hibeh námeh* by her husband in her favour, to prevent the sale of her husband's house, attached in execution of a decree against him; it was held, that as the property given had not been transferred to the possession of the donee, but had remained until the attachment partly in the hands of the donor and partly in those of his cousin, the *Hibeh námeh* was invalid. *Shekh Uhmud Shekh Ruheem* v. *Mt. Hufeez Buhoo.* 26th July 1823. 2 Borr. 611.—Romer, Sutherland, & Ironside.

71. A *Hibeh*, or gift, is fixed by the *Ijáb-i-kabúl*, or "acceptance of the verbal gift," and a *Hibeh námeh* in which the *Ijáb*, or "verbal offer," alone is written, not the acknowledgment, or *Kabúl*, and which is not followed by possession, is invalid, and cannot be executed. *Ib.*

72. Land, being joint property, cannot be bestowed by a *Hibeh námeh;* but if the donor, having separated his share, should give it away, and the donee *should take it in possession*, the gift would then be valid; for by the Muhammadan law possession is an indispensable part of a gift, which is not valid without it. And where, in a suit by a Muhammadan against the heirs of a woman deceased for her *Wazífah* lands, his property under a deed of gift executed by her in his favour, the Court held that possession of the lands by him was not proved, or that he enjoyed any income from them, and the suit was dismissed. *Shekh Humeedood Deen* v. *Nuzur-ood Deen.* 19th Jan. 1824. 2 Borr. 648.—Romer.

73. A deed executed by a Musulmán during an illness of which he dies is good only for one-third. *Case of Moonshee Hassan Ali.* Barwell's Notes, 91.

74. Where a third of certain property had been decreed to a Musulmán by the Zillah Judge (Jones), he claiming the whole under a deed of gift passed to him from his brother-in-law previous to his decease; the Provincial Court (Sutherland and Taylor) reversed the decree, on the ground that the donee had not exer-

cised ownership, and was not entitled even to the one-third share; but on appeal it was held, that as the donee was now left in a worse position than he was in before he appealed, and as the Provincial Court had decided on a point not referred to them, the decree of the Provincial Court should be amended, so far as to confine its operation to two-thirds of the property, the claim to which had been thrown out by the Zillah Judge's decree, deciding that the donee was not entitled to possess those two-thirds; but with regard to the remaining one-third it was decided, that as neither party had appealed from that part of the decision it should remain in force until brought before the Court in a regular form. Costs in the Lower Courts were decreed to be discharged from the estate, but in the Upper Court to be defrayed by the appellant. *Meyajee Alleebhoy* v. *Metha Nuthoo and another*. 8th May 1832. Sel. Rep. 80.—Ironside, Barnard, Baillie, & Henderson.

75. Semble, A Musulmán making a deed of gift upon his death-bed, the deed cannot hold good further than it may be considered a bequest, by which a man who has heirs can bequeath only one-third of his property to a stranger, and then the party in whose favour it was passed would be entitled, without the consent of the heirs, to one-third of the property, whatever it might be, after all other claims on the estate had been liquidated. *Ib.*

76. Semble, If one of the heirs of a Musulmán passing property by deed of gift to a stranger admit the gift, it will hold against his share. *Ib.*

77. *A* sued *B* for a share of certain properties, under a deed of gift, for a consideration executed by *B*'s mother. *B* alleged that a forged deed in this form had been substituted for a gift in the ordinary form, because the latter was vitiated by confusion and defect of possession. He further alleged that the consideration was fictitious. The Sudder Dewanny Adawlut decreed *A*'s claim on proof of the deed, and did not try the fact of consideration. *Sayud Husain Ali Khan* v. *Fiyaz Uddin Haidar*. 28th Nov. 1832. 5 S. D. A. Rep. 239.—Walpole.

78. A *Kabín námeh*, or deed of marriage settlement, containing a gift by the husband to his wife of the whole property possessed by him, or which thereafter might come into his possession, is valid in regard to the property in the actual possession of the husband at the time of the execution of the deed, but not in regard to property acquired subsequently by him, non-existent property not being capable, under the Muhammadan law, of being made the subject of a gift. *Oojudhea Beebee and others* v. *Mohun Beebee and another*. 30th June 1835. 6 S. D. A. Rep. 30.—Braddon & Stockwell.

79. Held, that a deed of gift of real property, legally executed, is valid against a deed of dower, previously executed by the same individual in favour of his wife, in which a sum of money is specified as dower due to her, without mention of a pledge of real property as security for the dower debt. *Mt. Suffuroonisa* v. *Ayesha Bibi*. 18th July 1837. 6 S. D. A. Rep. 177.—Rattray & F. C. Smith.

80. A deed of gift for a consideration *bonâ fide* executed by a trader to his wife, such trader not being shewn to be in debt at the time, or that he executed it in contemplation of insolvency, is good against subsequent dispositions of the property. Such a deed of gift, by the Muhammadan law, must be construed according to the rules affecting the laws of sale, and the validity of a sale is derived, not from the seisin, but from the contract. *Doe dem. Ramtonoo Mookerjee* v. *Bibee Jeenut*. 1st Term 1843. 1 Fulton, 152.

80 *a*. A deed of adoption by a Musulmán, declaring that the adopted son should "succeed to his property and title," was held, on appeal, to be inoperative and void, either as a deed

of gift, or as a testamentary disposition, no delivery of possession and relinquishment by the donor, or seisin by the donee, having taken place. *Jeswunt Singjee Ubby Singjee* v. *Jet Singjee Ubby Singjee.* 5th Feb. 1844. 3 Moore Ind. App. 245.

7. *By the Imámíyah Doctrine.*[1]

81. By the law, as received by the *Shía* sect, gift of an aliquot part of an undivided whole is valid.[2] *Mirza Kásim Ali* v. *Mirza Muhammad Hosen.* 29th May 1832. 5 S. D. A. Rep. 213.—Rattray & Walpole.

82. According to the law of the *Shía* sect an undefined gift is valid. *Ib. as cited in Ramrutton Rae* v. *Furrook oon Nissa.* P. C. Cases.—Walpole.

III. In the Supreme Courts.

83. A gift, intended as such, by a father to his natural son, though advanced to him as a loan by way of precaution for good behaviour, and afterwards disavowed by the father as a loan, does not affect any provision by a subsequent will. *Burt and others* v. *Wood and others.* 11th April 1816. East's Notes. Case 52.

[1] There is no translated work on the Imámíyah law of gift, Baillie's Digest, unfortunately, not having reached that division of the Shía law.

[2] In a former case (*Azeemoodin* v. *Fatima Beebee.* 27th June 1799. 1 S. D. A. Rep. 24.) the law officers of the Court, after propounding the doctrine of the Suníy Jurisprudents as to gift of part of an undivided whole and possession, cited these extracts from the Sharáia al Islám as shewing the doctrine of the Shía doctors on the same subjects—"As to immoveable and non-deliverable property, possession arises from abandonment of the donor. In regard to moveable and deliverable things, it arises from delivery and transfer. Gift of undivided property is valid, like that of divided, and possession thereof is established by the surrender of the whole to the donee. But if the tenant in common refuse, let the donee direct him to appoint him to be agent for possession; should he refuse, let the ruler appoint an agent to hold for both, to whom the donor may then transfer. The gift is not valid of that of which possession cannot be given—for instance, of a bird in the air, and of a fish in the river." "If he give what the donor already holds, it is valid, and there is no need for the permission of the donor to take possession, nor that the time during which possession is possible should have passed. But to this latter position some jurisprudents scarcely incline."

GÓDNÁ.—See Criminal Law, 562.

GOLAHS.—See Dues and Duties, 4; Salt, *passim.*

GOMASHTAH.—See Agent and Principal, *passim;* Surety, 20.

GOOROO.—See Gift, 34; Inheritance, 191 *et seq.*; Priest, *passim.*

GOSÁYEN.—See Dues and Duties, 12; Inheritance, 190, 191.

GOVERNMENT FUNDS.

1. *A* deposited a sum of money in the treasury of the Collector, as a loan to Government, but died before the promissory note to the amount of the deposit had been made over to him; *A*'s heirs claimed against the Collector for re-payment of the deposit to them, but the Court held that it was not competent to the Collector to refund the money which, having been deposited as an investment in the public funds, could not be repaid without the orders of Government; and it was decreed that the promissory note should be obtained from the Accountant General, sold at the market rate, and the proceeds, after payment thereout of the costs of suit, divided amongst the heirs of *A*, according to their respective shares. *Collector of Chittagong* v. *Mt. Mallaka Banoo.* 2d Feb. 1841. 7 S. D. A. Rep. 13.—Lee Warner & D. C. Smyth.

GOVERNMENT PLEADER.—See CRIMINAL LAW, 502, 503.

GOVERNOR-GENERAL.

1. The Governor-General and the majority of the Council cannot, of their own sole authority, dismiss a person appointed to an office by the Honourable Company. (Hyde and Chambers, J., dissent.) *Stewart* v. *Auriol.* Hyde's Notes. 13th March 1776. Mor. 209, note.

2. The power of altering the public assessment is not vested by the Regulations in the Civil Courts of Judicature, but is reserved exclusively to the Governor-General in Council. *Bhowanny Pershaud Chuckerbutty* v. *Mt. Coroona Mye.* 7th June 1817. 2 S. D. A. Rep. 242.—Ker & Oswald.

3. Per Grey, C.J.—The Governor-General in Council can only act according to the provisions of the Statutes, and he cannot delegate an authority to any one to say what is a genuine act of Government. *The Bank of Bengal* v. *The East-India Company.* 17th Jan. 1831. Bignell, 144.

GRANT.

I. IN THE SUPREME COURTS, 1.
II. IN THE COURTS OF THE HONOURABLE COMPANY, 2.

I. IN THE SUPREME COURTS.

1. A grant of two villages in consideration of the services of the grantee and his family, reserving a common rent for the villages in question, together with another village confirmed to the family by the same deed, and previously granted to the family, rests exclusively in the grantee, such appearing to have been the intention. *Mootiah* v. *Nineapah.* 1816. 2 Str. 333.

II. IN THE COURTS OF THE HONOURABLE COMPANY.

2. Grants obtained in *Farzí*, or fictitious or substituted names, are not illegal by the Muhammadan law; and the property conveyed by such grant is vested in the person to whom the grant is actually made, and not necessarily in the person whose name is made use of. *Sheikh Buhauder Ali* v. *Sheikh Dhomun and others.* 8th Aug. 1808. 1 S. D. A. Rep. 250.—Harington & Fombelle. *Mt. Hyatun and another* v. *Moohummud Hussun Khan.* 3d April 1826. 4 S. D. A. Rep. 134.—Leycester & Dorin.

3. A grant obtained by the acquirer in the substituted name of a female relation (with the apparent intention of enabling her to take the estate at his death) is of no avail, in Muhammadan law, against the right of the legal heirs of the real grantee. *Sheikh Buhauder Ali* v. *Sheikh Dhomun and others.* 8th Aug. 1808. 1 S. D. A. Rep. 250.—Harington & Fombelle.

4. Semble, That a grant by an *Inámdár*, not attested by his eldest son, is invalid. *Pandoorung Padya* v. *Narroo Padya.* 8th Feb. 1839. Sel. Rep. 186.—Pyne, Greenhill, & Le Geyt.

GUARANTEE.

I. IN THE SUPREME COURTS, 1.
II. IN THE COURTS OF THE HONOURABLE COMPANY, 2.

I. IN THE SUPREME COURTS.

1. A mere promise by a person to pay the debts of another, without any consideration of benefit to the party promising, or of detriment to the other, is void by the Hindú, as well as by the English law. *Gopeenaut Chowdry* v. *Bissonaut Malacar.* 22d March 1821. East's Notes. Case 25.

II. In the Courts of the Honourable Company.

2. A person guaranteeing to a merchant a safe return for goods entrusted to a supercargo for sale at a foreign port, and executing an instrument to that effect, for a premium of two per cent., was held to be liable to make good such engagement, the instrument being declared valid, though written on unstamped paper and proved by indirect evidence. *Suhoorab Shah Bezunjee* v. *Hurjeevundas Hurkishundas.* 27th June 1822. 2 Borr. 304.—Romer, Sutherland, & Ironside.

GUARDIAN.

I. Hindú Law, 1.
II. Muhammadan Law, 4.
III. In the Privy Council, 4 *a*.
IV. In the Supreme Courts, 5.
1. *Appointment of Guardian*, 5.
2. *Liability of Guardian*, 8.
IV. In the Courts of the Honourable Company, 10.
1. *Generally*, 10.
2. *Right of Guardianship*, 11.
3. *Appointment of Guardian*, 12.
4. *Liability of Guardian*, 13.

I. Hindú Law.[1]

1. A share of an estate belonging to a minor, together with a certain sum set apart for his maintenance until his coming of age, was decreed to be entrusted to his mother as guardian. *Huruk Baee* v. *Hurgovindas.* 25th July 1816. 1 Borr. 407.—Prendergast & Sutherland.

2. Where a Hindú claimed against his brother's fourth wife, and a daughter by his first, to prove his right to the guardianship of the minor son of his brother by a third, separation having taken place between the brothers; it was held that the boy's stepmother was his legal guardian, and in the event of her resigning, then the uncle, his claim being preferable to that of the half-sister.[2] *Lukmee* v. *Umurchund Deochund.* 17th Dec. 1821. 2 Borr. 144.—Elphinston, Romer, & Ironside.

3. A stepmother resigning the guardianship of a minor is incapacitated by her own act, which she cannot afterwards revoke, and the right of guardianship goes to the next entitled in succession to such right. *Ib.*

II. Muhammadan Law.[3]

4. By the Muhammadan law, a widow appointed guardian by her husband of their infant child is entitled, in case of injury or disseisin done to the infant's property, to sue in the infant's name alone, or coupled with her own as guardian. *Anon.* 4th Term 1813. East's Notes. Case 1.

III. In the Privy Council.

4 *a*. Pending a suit for partition by a widow, she adopted a son, by the direction of her late husband; by the Hindú law the act of adoption diverted the property from the widow and vested it in the adopted son, subject to the maintenance of the widow. Notwithstanding the adoption, however, the suit was prosecuted in the widow's name, and a decree was made directing her to be put in possession. It was held by the Judicial Committee of the Privy Council, that, in such circumstances, she prosecuted the suit

[1] See, respecting the Hindú law of Guardian and Ward, Menu, B. V. v. 27. 1 Coleb. Dig. 293. 2 Do. 543. 3 Do. 542 *et seq.* Macn. Cons. H. L. 25. 1 Macn. Princ. H. L. 102. 2 Do. 205. 1 Str. H. L. 71, 72. 2 Do. 73—77. 79, 80, 81. 305.

[2] 1 Macn. Princ. H. L. 104.

[3] For the Muhammadan law respecting the guardianship of minors see 1 Hed. 421. 2 Do. 285. 3 Do. 31. 242. 396. 471. 518. 520. 608. 4 Do. 124. 213. 217. 544. Macn. Princ. M L. 62 *et seq* 265 268, 269. 307.

as guardian of the adopted son, and that she was entitled to possession as his trustee, and accountable to him for the profits of the property so decreed to her. *Dhurm Das Pandey and others* v. *Mt. Shama Soondri Dibia.* 8th Dec. 1843. 3 Moore Ind. App. 229.

IV. In the Supreme Courts.

1. *Appointment of Guardian.*

5. The power of appointing guardians is part of the prerogative granted to the Supreme Court, and belongs neither to the equity nor the ecclesiastical jurisdiction. *In the matter of Ann Butler.* Hyde's Notes. 2d July 1778. Mor. 262.

6. The mother of an infant widow was appointed her guardian, and a competent monthly allowance was ordered to be paid out of her husband's estate for her support during her infancy. *Hurrosoondery Dossee* v. *Cossinauth Bysack.* 1815. Macn. Cons. H. L. 83.

7. The Supreme Court will not appoint a guardian resident out of its jurisdiction, but a person resident at Calcutta may be appointed guardian *pro tanto*, to receive and remit the money allowed for the infant's maintenance to England, and to be responsible for its application, the infant being in that country.[1] *Coverdale* v. *Greenway.* 27th Oct. 1830. Bignell, 11.

2. *Liability of Guardian.*

8. A release by a minor to his guardian soon after his coming of age will be set aside, if it should appear, from the circumstances of the case, that the release was improperly obtained, with reference to the particular time and occasion of his signature to it: such signature it would seem, upon the general principles of the Court, independently of circumstances, cannot be held binding, but must be declared void.[2] *Gillon* v. *Mitford.* 26th Oct. 1808. 1 Str. 324.

9. A Hindú guardian was ordered to pay into the hands of the Accountant-General such part of the personal estate of his infant ward (being personal estate of an undivided Hindú family) as he had in his own hands, and over which he had the legal disposition, viz. Company's paper, part of which was in his own name, and therefore capable of being transferred by his own indorsement. *Ex parte Lokeeaunt Mullick and others.* 20th March 1815. East's Notes. Case 30.

II. In the Courts of the Honourable Company.

1. *Generally.*

10. Where *A* had managed the estate of *B*, a minor aged fifteen years, and took from *B* a conveyance, by way of gift, in consideration of an alleged debt for expenditure on his account, which appeared grossly extravagant; it was held that the conveyance should be set aside with reference to this and the minority of *B*, without prejudice to *A*'s recourse on *B* for any claim for money expended on *B*'s account. *Lachman Das* v. *Rup Chand.* 26th April 1831. 5 S. D. A. Rep. 114.—Scaly.

2. *Right of Guardianship.*

11. In a suit by a Pársí minor through his guardians, his great uncle and cousin, for recovery (together with its rent) of a house of his mortgaged by two of the respondents, who

[1] The person appointed was the lawfully-constituted attorney of the father, and appointed guardian of the infants, who were all resident in England.

[2] This judgment was affirmed on appeal by the Judicial Committee of the Privy Council on the 27th June 1816

claimed, under an alleged will, to be trustees of the estate, and the appellant's guardians; it was held that the great uncle and cousin, his nearest relations, were his natural guardians, the claim of the respondents not being confirmed by any positive deed; but the mortgagee was declared to be responsible to the appellant in the first instance, and was ordered to deliver up to him the house in dispute, with the rents and mesne profits received by him as mortgagee, he bearing all costs of the suit. *Gooshtusp Suhoorabjee* v. *Kaoosjee Kala Bhaee.* 18th Dec. 1816. 1 Borr. 317.—Sir E. Nepean, Nightingale, & Elphinston.

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3. *Appointment of Guardian.*

12. Held, on a reference from the Zillah Court, that the Sudder Dewanny Adawlut has the power, under Reg. I. of 1800, of interfering summarily, and of appointing a co-guardian and manager to act conjointly with the guardian and manager of a minor's estate, under Reg. V. of 1799, when the actual guardian, or manager, may be disqualified, from a total ignorance of the language, want of knowledge of *Zamindári* accounts, and advanced age. *Jordan, Applicant.* 22d June 1840. 1 Sev. Cases, 37.—Tucker, D. C. Smyth, & Reid.

12 *a*. Held, that a claim against a guardian appointed under Reg. I. of 1800, by his ward, who had recently attained his majority, cannot be summarily enforced.[1] *Issen Kishwar Accharge, Petitioner.* 9th May 1842. S. D. A. Sum. Cases, 30. —Reid.

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4. *Liability.*

13. A guardian was held to be responsible for all claims arising out of transactions during his management; and to him, therefore, must claimants look for the satisfaction of their demands, and not to the minor whose estate he manages. *Anon.* Case 1 of 1812. 1 Mad. Dec. 51. —Scott & Greenway.

14. But the estate of a minor is responsible for all just debts incurred on his account; and his guardian, having rendered full and fair accounts, would be entitled to recover from the estate any sums that might appear to have been borrowed from necessity, and for the evident benefit of the minor. *Ib.*

15. It was held that a person officiating for a minor, whose guardian he was, in the capacity of *Tahsildár*, and borrowing money in his own name to discharge the public revenue, will be solely responsible, in the first instance, for the repayment of it, even after his removal from the office, and the minor's succession to it; but that, on an adjustment of accounts, he is entitled to be reimbursed by the latter, should the debt appear to have been really incurred on his account, and *bonâ fide* chargeable to him. *Neek Singh and another* v. *Anoopun Das and another.* 22d May 1815. 2 S. D. A. Rep. 154. — Harington & Stuart.

16. In a suit instituted against a minor landholder and his guardian, jointly, to recover rents unduly levied during the minority of the former; it was held that the latter is alone liable in the first instance, notwithstanding that the former had attained to majority before the final decision of the suit, with liberty, however, to sue for reimbursement, should he think fit. *Jowahir Singh* v. *Chundernarain Rai and others.* 26th March 1821. 3 S. D. A. Rep. 83.—Goad & Dorin.

17. A Hindú married woman claimed to recover from her father-in-law certain property left in his charge by her mother for her benefit. The woman and her husband were both minors, and the father-in-law was her guardian, but he had been obliged by the Court to resign her guardianship to her uncle because he ill-treated her. She thereupon sued him for her property, but the suit was dismissed, as there was no suffi-

[1] See Construction, No. 720.

cient proof adduced that her father-in-law had received the property. *Oottumram Dhoolubhram* v. *Mt. Dhunnee.* 5th May 1821. 2 Borr. 16.—Elphinston, Romer, & Sutherland.

18. A Hindú widow, having an infant son, and having taken upon herself the management of her late husband's affairs, was held to be personally responsible for his debts, both on this account and as guardian to her son. *Oottumram and another* v. *Mt. Bhanee and another.* 14th March 1822. 2 Borr. 166.—Romer, Sutherland, & Ironside.

19. A decree for damages for defamation of character, by a charge of corruption against *A*, who alleged himself to be the guardian of *B* and *C*, and to have made the charge in their behalf, they being minors, and therefore not liable, was held by the Court to be personal, and not to confer on *A* any exemption from liability, nor to subject the estate of *B* and *C* to be sold in execution thereof. *Bhaira Chandra Bose* v. *Thomas. Gurn Das Ray, Applicant.* 29th Jan. 1839. 1 Sev. Cases, 85. — Reid & Braddon.

GUMÁSHTAH.—See AGENT, *passim;* SURETY, 20.

GURU.—See INHERITANCE, 191 *et seq.*; PRIEST, *passim.*

HABEAS CORPUS.

I. GENERALLY, 1.
II. POWER OF THE SUPREME COURT TO ISSUE THE WRIT OF.—See JURISDICTION, 166 *et seq.*

I. GENERALLY.

1. Where *habeas corpus* is issued to a distant place, it may be advisable to move immediately for a rule to return the writ, in order to save time. The Judge who issued the writ may grant an attachment for disobedience to the rules, either in term or in vacation.[1] *In the matter of Coza Zachariah Khan and others.* Hyde's Notes. 15th Jan. 1779. Mor. 263.

2. A return to a writ of *habeas corpus*, stating the cause of the filing, signing, and detention, to be that he was a British subject residing and trading in Calcutta, not being in the service of the King or East-India Company, or the Governor-General in Council, and that the Governor-General had ordered him to be seized and sent to Europe in the first of the Company's ships that should sail in the ensuing season, and to be kept in custody of the town-major in the meantime, unless he should give security, and that the said town-major was ordered by the Governor-General in Council to seize and detain him without any warrant of commitment, it will be presumed that the order (which need not be under seal) was in writing, and signed by the chief Secretary, as required by the Stat. 26th Geo. III. c. 16. s. 12.[2] *The King* v. *Gordon.* 16th June 1791. East's Notes. Case 126.

2*a*. Where a party had come to the Court to give evidence in a cause for the plaintiffs (the cause being in the paper at the time), and was returning in the direct road to his own house when he was arrested on process out of a Mofussil Court, issued at the suit of the defendant in the Supreme Court, the Court granted a writ of *habeas corpus*, and on the man being brought up he was ordered to be discharged. *Rajah Mohinder Deb Rai* v. *Ramcanai Cur.* 25th Nov. 1794. Sm. R. 148.

2*b*. *Habeas corpus ad testificandum* was awarded by the Court to a

[1] Writs of *habeas corpus* are now constantly issued in vacation, but they are not moved in Court, but before a single Judge. —Mor.

[2] This case was under the provisions of the earlier Statutes. See Vol II of this work, p. 229, note

jailor, to bring up the body of a prisoner to give evidence in a cause which stood for that day, but was adjourned till the morrow. *Doe dem. Brujesehree Seatanny* v. *Ramnarain Misser*. 16th June 1800. Sm. R. 148.

3. The Court will not, upon a *habeas corpus*, compel a young woman that is marriageable to go home to her father, contrary to her consent. *The King* v. *De Urilla*. 29th March 1814. 2 Str. 249.

4. If a Hindú neglect to provide a husband for his daughter in time, he loses the right to dispose of her in marriage, and the Court will not, upon a *habeas corpus*, compel her, against her will, to return to her father. *The King* v. *Kistnama Naick*. 27th April 1814. 2 Str. 251.

5. A writ of *habeas corpus* will be granted to the mother of an illegitimate infant, to obtain possession of it, it being in the custody of its putative father, where there appear no circumstances to controul the right of custody. *The King* v. *Nagapen*. 3d May 1814. 2 Str. 253.

6. A *habeas corpus* will lie to release persons improperly deprived of their liberty by the Nabob of the Carnatic (an independent native prince). *The King* v. *Monisse and others*. 11th May 1810. 2 Str. 119.

7. A rule nisi for a *habeas corpus* to bring up an illegitimate infant, in the charge of *A B*, having been granted on the application of the mother of the child, was discharged, on its being proved that it was more for the benefit of the child to remain under the protection of *A B*. *Ex-parte Intiazzoon Nissa Begum*. 14th Sept. 1814. 2 Str. 271.

8. *Habeas corpus ad testificandum* will issue to the jailor of a Mofussil jail. *The Queen* v. *Shawe and others*. 23d Oct. 1843. 1 Fulton, 328.

HADD.—See CRIMINAL LAW, 390. 392. 559. 572.

HAKKS.—See DUES AND DUTIES, 6. 19, 20.

HALÁKAT.—See CRIMINAL LAW, 295.

HARBOURING ADULTERERS.—See CRIMINAL LAW, 278.

HARBOURING DACOITS. — See CRIMINAL LAW, 279.

HÁT.

1. The Zillah Judge, referring to a decree of the Court of Appeal, directed the discontinuance of a *Hát*, or fair; but on appeal, it appearing that such decree had no reference to the *Hát* established by the petitioner, who was not even a party to the suit, the interference in the matter by the Zillah Judge, on the ground of the decree above mentioned, was held to be therefore improper, and the order of the Zillah Judge was accordingly reversed. *Dhun Khan, Petitioner*. 22d July 1840. 1 Sev. Cases, 103.—Reid.

2. Illegal collections, under the description *Tehbázárí*, or other denominations, from persons exposing goods for sale in *Háts* under temporary stalls and sheds, cannot be taken into account in the adjustment of mesne profits in the execution of a decree for a *Hát* and its *Wásilát*. *Radhamohun Ghose Chaudhuri, Petitioner*. 10th Feb. 1846. 2 Sev. Cases, 323.—Reid.

HÁZIR ZÁMINÍ.—See SECURITY, 6, 7.

HIBEH BIL-IWAZ. — See GIFT, 52, 53, 54. 63.

HIBEH BA SHART-UL-IWAZ. —See GIFT, 53.

HIBEH NÁMEH. — See GIFT, *passim*; EVIDENCE, 90. 153.

HIGH SHERIFF.—See JURY, 1.

HIGHWAY ROBBERY. — See CRIMINAL LAW, 280 *et seq.*

HINDÚ WIDOW.

I. RIGHTS, POWERS, AUTHORITY, AND LIABILITY.[1]

1. *Generally*, 1.
2. *Alienation by*, 11.
3. *Debts*, 33.
4. *Gift by.—See* GIFT, 6 *et seq.*
5. *Right to Adopt.—See* ADOPTION, 1 *et seq.*
6. *Right to give in Adoption.—See* ADOPTION, 64 *et seq.*
7. *Power of Partition. — See* PARTITION, 8.
8. *Rights on Partition. — See* PARTITION, 20, 21, 22. 38.
9. *Power to execute Deeds. — See* DEED, 2. 5.
10. *Power to make a Will.—See* WILL, 15. 34, 35.

II. SUCCESSION OF.— See INHERITANCE, 48 *et seq.*

III. MAINTENANCE OF.—See MAINTENANCE, 3 *et seq.*

[1] For the estate taken by a widow in the property of her late husband, see INHERITANCE, 48 *et seq*, and notes.

I. RIGHTS, POWERS, AUTHORITY, AND LIABILITY.

1. *Generally.*

1. A Hindú widow is barred by incontinence (proved on evidence) from recovering in ejectment as heir to her husband.[2] *Doe dem. Radamoney Raur* v. *Nielmoney Dass.* Chamb. Notes. 3d July 1792. Sm. R. 81.

2. In a suit by the widow of a Hindú as joint *Zamíndár* of an estate in right of her husband, who died without issue, for a share of *Mushá-hara*, or proprietary income, judgment was passed in her favour. A *Rafa námeh* set up by the defendant, importing that the plaintiff gave up the income rightly due to her, and agreed to receive about a third of it, was rejected as not established; but the Pandits gave an opinion, that if duly executed by her it would have been valid against her and her husband's heirs. *Sed quære de hoc.*[3]

[2] Mit. c. ii. s. i. 30. 36—39. s. x. 14, 15. 3 Coleb. Dig. 458. 478, 479. 1 Str. H. L. 136. 163. 172, and note 244. 2 Do. 269, 270. 272. Dáya Bh. c. xi. s. i. 2. 2 Macn. Princ. H. L. 20, 21. Dáya Cr. San. c. i. s. ii. 3. May. c. iv. s. viii. 2. 4. 6. 8, 9. Steele, 42.

[3] The opinion delivered by the Pandits, purporting that the deed of relinquishment, if genuine, might have been binding on the heirs of the husband and successors of the widow, as well as on the widow herself, who executed it, is questionable, as importing that it would be binding on them beyond the period of her life, because it was voluntarily executed by her. Being successors not only to the *Zamíndárí* held by her for her life, but to the savings accumulated by her during her possession of it, and, on the other hand, obliged to support her should she become destitute, they might have pretensions to resist an improvident relinquishment by her of a part of her income. If, however, she reserved a sufficiency for her maintenance, they could not be admitted to contest at law her voluntary and deliberate acts upon this ground, any more than to recal any improvident expenditure or gift of a part of her income after it had come into her hands, the controul over a woman who is enjoined to make a frugal use of her husband's property, which has devolved on

Sheochund Rai v. *Lubung Dasee.* 14th Feb. 1799. 1 S. D. A. Rep. 22. —Cowper.

3. One of two widows of two full brothers sued the other for the estate of her late husband, detained by the defendant under a plea of a will by the plaintiff's husband in favour of his brother, to the exclusion of the right of his own children further than for a maintenance. The claim was adjusted by a reference to the law officers of the Zillah Court; but on appeal to the Provincial Court, the right of the plaintiff, then respondent, was recognized. On a subsequent appeal to the Sudder Court, the right of the children of the respondent (respondent being dead) to their father's property was fully confirmed, the award of the Zillah law officers being declared to be illegal under Sec. 15. of Reg. II. of 1800.[1] *Deo Baee* v. *Wan Baee and others.* 22d Dec. 1810. 1 Borr. 27.—Duncan, Lechmere, & Rickards.

4. A Hindú widow is not bound to live with her husband's relatives after the death of her husband; nor does she forfeit her right of succession by removing from the family dwelling-house.[2] *Cossinauth Bysack* v. *Hurosoondery Dossee.* 11th Aug. 1819. Cl. R. 1834. 91.

5. Where separation has taken place between brothers, and a *Fárikhkhatt* passed by one brother for the amount of his share, his widow was held to have no claim whatever on his brother and nephews, it having been established that her husband had received his share long previously to his death. *Mt. Sheo Baee* v. *Gowreenund Huranund.* 1st Aug. 1822. 2 Borr. 289.—Sutherland & Barnard.

6. Where *A* claimed from *B*, a Hindú woman, in consequence of her second marriage, the recovery of a room in a house, and of the dower given by *A*'s nephew, her first husband, who died about thirty-three years before; it was held; on proof that no separation had taken place between *A* and his brother, *B*'s father-in-law, that *A* was entitled to possession of the room. The liability of a widow to return the dower of her first marriage on contracting a second was admitted by the Court;

her for want of male issue, not extending to this length. (Dáya Bh. c. ii. s i. 56. 60.) But she could not, by her act, bind the successors to relinquishment of part of their due share of the estate after her death. On the other hand, if the relinquishment of a claim to a greater income than the assets of the estate would afford were *bonâ fide* made on real and sufficient grounds, the transaction might be unexceptionable, but no doubt, if it proceeded on a false suggestion, it could not conclude either her or the heirs. As the deed itself was considered not to have been proved, and the decision did not turn on the question of the widow's power to bind the heirs, the opinion of the law officers on that point must be taken with limitation and caution.—Coleb.

[1] The law officers of the Zillah Court in this case appeared to hold a middle course, neither declaring separation to have taken place nor granting respondent a share, to which she would have been entitled if division had been effected, but allowing her all the property noted in the *Taksím námeh* as "her own and her mother-in-law's," and a maintenance. In their opinion, therefore, separation had not taken place; and the opinion of the law officers of the Court of Appeal only applies to a case where separation had taken place. Thus the law officers were completely at variance, whilst none of the decrees declare whether partition had or had not been made. 1 Borr. 35, note.

Sec. 15. of Reg. II. of 1800 was rescinded by Reg I of 1827.

[2] But this separate residence by the widow, though perhaps not a sufficient cause for exclusion from inheritance, does not seem to be justified by the text books Menu says: "A woman is never fit for independence," meaning that she should always be under protection. Menu, B. ix. v. 2. *et seq* And see Dáya Bh. c. xi. s. i. 56, 57. 64. Dáya Cr. San. c. i. s. ii. 3, 4. 2 Coleb. Dig. 381. 384, 385. 1 Macn. Princ. H. L 104. 1 Str. H. L. 244. 2 Do. 272, 273. Steele, 37, 38. There is, however, no doubt that the mere fact of living apart from her relations does not in any way affect a widow's right to maintenance. A particular account of the proceedings in this case will be found in Macn. Cons. H. L. 78 *et seq.*; and the learned and elaborate judgment delivered in the Supreme Court by East, C J., is reported in Vol II. of this work, p. 198.

but the claim was dismissed, as it was not proved that any dower belonging to the estate of *B*'s late husband was in her possession on her second marriage. *Treekumjee Laljee* v. *Mt. Laroo and another.* 15th Aug. 1822. 2 Borr. 361.—Romer, Sutherland, & Barnard.

7. Where certain ornaments had been delivered to a Hindú widow under a will of her husband, subsequently declared to be invalid; it was held, that if the sons of the deceased considered themselves entitled to share therein, and she neglected to resign them to the common estate, they, or any of them, might bring the point to an issue by suing her. *Mt. Muncha and others* v. *Brijboohun and another.* 27th May 1824. Sel. Rep. 1.—Romer, Sutherland, & Ironside.

8. The eldest of two widows, whose husband died leaving no sons nor grandsons, cannot, during her life, constitute by deed any person other than the second widow her heir and successor.[1] *Sree Vutsavoy Jagganadhu Rauze* v. *Sree Vutsavoy Boochee Seetiah.* Case 5 of 1824. 1 Mad. Dec. 453.—Ogilvie, Cochrane, & Oliver.

9. A Hindú widow being jointly entitled with her son, he, with her consent, borrowed money for family purposes, but granted notes in his own name only. On these he was sued, and judgment and execution obtained, under which the Sheriff sold "all *his* right and title" to a purchaser under whom the defendant claimed. Held, that the lessor of the plaintiff was entitled, as tenant in common with the defendant, as to her life interest. *Doe dem. Kartiany Dabee* v. *Cossinauth Haldar.* 1st Term 1829. Cl. R. 1834. 26.

10. Where a Hindú widow had, during the minority of her sons, compromised to their prejudice a case regarding the property of her deceased husband, and her sons, on attaining their majority, petitioned to have the compromise set aside, it was set aside accordingly, as, by the Hindú law, she had not authority to act, and could not so dispose of property in which she had only a life interest. *Ram Kewul Biswas and others* v. *Juggurnath Biswas and others.* 29th Jan. 1835. 6 S. D. A. Rep. 19.—H. Shakespear, Robertson, & Stockwell.

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2. *Alienation.*

11. It was held that a widow takes only a life estate in moveable property bequeathed to her by the will of her husband. She can dispose of the interest and growing property, but she cannot dispose of the property itself without the consent of the Supreme Court, who represent those that, by the Hindú law, are to controul and superintend in such cases.[2] *Dyalchund Addy and others* v. *Kishoorie Dossee.* 6th April 1795. Mor. 83. Macn. Cons. H. L. 20.

12. Lands assigned to his stepmother, *Baráí Khúr-o-pósh*, or as personal maintenance, cannot be alienated by her, but on her death will revert to the *Zamíndár*. *Kishenmohun Gosaen* v. *Chutter Sing.* 4th Nov. 1808. 1 S. D. A. Rep. 259.—Crisp & Fombelle.

13. The widow of a Hindú cannot alienate the estate of her deceased husband by a deed of gift without the consent of his heirs. *Nundkomar Rai and another* v. *Rajindurnaraen.* 2d Dec. 1808. 1 S. D. A. Rep. 261.—Harington & Fombelle.

14. A Hindú widow, holding only a life estate in her husband's landed estate, cannot alienate it without the

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[1] The survivor of two widows is undoubtedly entitled to the inheritance, and therefore, of course, the deed was a nullity. See Mit. c. ii. s. i. 5, note. 1 Str H. L 56. 137. And see 3 Coleb Dig 485, 486

[2] See INHERITANCE, 48 *et seq.* and notes, for the estate taken by a Hindu widow succeeding to her late husband's property.

consent of her husband's heirs-at-law.[1] *Mt. Bhuwani Munee* v. *Mt. Solukhna.* 16th April 1811. 1 S. D. A. Rep. 322.—Harington. *Mohun Lal Khan* v. *Ranee Siroomunnee.* 31st Aug. 1812. 2 S. D. A. Rep. 32.—Harington & Fombelle.

14 *a.* Except for religious purposes. *Mt. Gyan Koowur and another* v. *Dookhurn Singh and another.*[2] 3d Feb. 1829. 4 S. D. A. Rep. 330.—Rattray.

15. The widow of a childless Hindú taking the entire estate of her late husband is restricted from alienating the same by sale or otherwise, except for the obsequies of her husband, or for her maintenance[3], unless with the sanction of her husband's heirs. *Hemchund Mujmoodar* v. *Mt. Tara Munnee and another.* 18th Dec. 1811. 1 S. D. A. 359.—Harington & Stuart. *Gocul Chund Chuckerwurtee* v. *Mt. Rajranee and and another.* 27th Jan. 1816. 2 S. D. A. Rep. 167.—Ker. *Ramchunder Surma* v. *Gungagovind Bunhoojiah.* 1st Feb. 1826. 4 S. D. A. Rep. 117.—Ross.

16. A Hindú widow cannot, by the law of the Mithila, Bengal, or Benares schools, make a gift of any of her deceased husband's immoveable property without the express consent of the heirs, except for the special reasons set forth in the Shastras. *Sreenarain Rai and another* v. *Bhya Jha.* 27th July 1812. 2 S. D. A. Rep. 23.—Harington & Stuart.

17. In Tirhoot a widow has power to consume, or give, or sell, in her lifetime, to a certain extent, the moveables which may have devolved upon her by the death of her husband, but has no power over the immoveables beyond a frugal enjoyment.[4] *Ib.*

18. And she cannot, except under special circumstances, alienate more than a moiety of her deceased husband's personal property. *Ib.*

19. According to the law of Bengal, the extent and limit of the power of a widow inheriting property from her husband to dispose of such property are not definable in the abstract, but must be left to depend upon the circumstances of the disposition when made, and must be consistent with the law regulating such disposition. *Cossinauth Bysack* v. *Hurrosoondery Dossee.*[5] 24th June 1826. Mor. 85. Cl. R. 1834. 91. East's Notes. Case 124.

19 *a.* It was held, that a widow left with infant sons and daughters may sell the real property of the sons for the necessary subsistence of herself and family, if there be no other certain means of providing for them; and this not only to procure the necessaries of life, but also for *Shrád* ceremonies and other necessary religious duties, and for the marriage portion of a daughter; and she is at liberty to sell such property for such purposes, though the family of her late husband at the time gave her children casual relief, the family being in great distress, and the relief casual. *Doe dem. Bissonaut Dutt* v. *Doorgapersaud Day and another.* 4th July 1815. East's Notes. Case 34.

20. Held, that a widow cannot alienate immoveable property inherited by her from her husband; and

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[1] See Gift, 7, 8. and notes.

[2] This case was decided by the law of Mithila.

[3] Dáya Bh. c. xi. s. i 2. 56, 57. 61 Dáya Cr. San. c. i. s. ii. 3. 5, 6. 1 Str. H L 246, 247 2 Do. 251. 408. 410 Macn Cons H L. 26. 314 1 Macn. Princ H. L. 19. 2 Do 211. 244 259. Steele, 42. 69, note.

[4] This case was decided according to the Vivéda Chintámaní and the Retnacára: there is no distinction between moveables and immoveables in this respect by the law of Bengal. See Inheritance, 51, 52. and notes. Dáya Bh. c. xi. s. i. Macn. Cons. H. L 93. See 2 Str. H. L 408, where Colebrooke, in a case occurring in Zillah Vizagapatam, upholds the widow's power over moveables.

[5] For the earlier proceedings in this case, see Macn Cons. H L. 78 *et seq.* And see Vol II of this work, p 198

such property, alienated by her, may, after her death, be recovered by the next heir of her husband. *Doe dem. Kisnogovind Sein* v. *Gunganarain Sircar.* 19th Nov. 1816. Macn. Cons. H. L. 18.

21. A Hindú widow having an infant son can only sell or mortgage the real property from necessity in the given cases; *inter alia,* for payment of her husband's debts; but where no such cause for a mortgage appeared on the evidence the Court would not decree a foreclosure or sale of the infant's moiety of the mortgaged premises, the mortgage deed in respect of such moiety having been executed by the widow in her own name. *Gopeymohun Thakoor* v. *Sebun Cower and others.* 11th Feb. 1817. East's Notes. Case 64.

22. In the case of a Hindú widow, having an infant son living, mortgaging the real estate of her late husband from necessity, the proof of such necessity lies with the purchaser. *Ib.*

23. A grant made by a widow of immoveable property, she having succeeded to it as her husband's heir, was held to be good for her life.[1] *Doe dem. Ramanund Mutchopadia* v. *Ramkissen Dutt.* 25th June 1817. Macn. Cons. H. L. 19.

24. Semble, That the widow of a Hindú dying without any known heirs may convey absolutely his estate as against all but the King.[2] *Doe dem. Sibnauth Roy* v. *Bunsook Buzzary.* 27th Jan. 1818. East's Notes. Case 73.

24*a*. A Hindú widow cannot make a sale of her late husband's landed property in perpetuity, neither will such her conveyance carry the estate even for her life, upon the principle of the sale being without ownership, which renders it void *ab initio.* She has no unlimited proprietary right over any part of her husband's property, but merely a general usufructuary right over the whole indiscriminately, and therefore cannot convey in perpetuity; nor can she convey the interest which she possesses, which (independently of its not being transferrible) is an interest of a totally different nature from that of proprietary right.[3] Note by Sir F. Macnaghten in *Doe dem. Gunganarain Bonnerjee* v. *Bulram Bonnerjee.* 20th July 1818. East's Notes. Case 85.

25. A Hindú, having no son, executes a deed, whereby he grants all his acquired property to his senior widow, provided no son be born, but otherwise to such son. Held, that no son being born, the widow takes the estate, with power of alienation. *Kishen Govind* v. *Ladlee Mohun Thakoor.* 30th Aug. 1819. 2 S. D. A. Rep. 309.

26. A Hindú widow, on contracting *Natra,* must deliver up all her late husband's property to his daughter in default of his nearer heirs; and a widow having married a second time, and alienated her first husband's property, by a *Krishnarpan,* to his nephew, the *Krishnarpan* was declared illegal, and set aside in favour of the daughter. *Hurkoonvur* v. *Ruttun Bace.* 2d March 1820. 1 Borr. 431. — Elphinston, Romer, & Sutherland.

27. It was held, that where a Hindú widow has no means of support, and cannot maintain herself, she may mortgage her father-in-law's

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[1] The grant in this case was made to the lessor of the plaintiff, Ramanund (a Brahman), by the widow, for the benefit of her husband's soul, and being for such purpose, of course came within the special cases provided for by the law It is questionable whether this grant would have been valid if *extra* the provisional exceptions, and I think there can be no doubt but that it would have been inoperative by the Hindú law had it not been a grant to a Brahman, and for one of the cases specially reserved, in which a widow has a power of alienation And see the next *placitum*

[2] *Sed quære de hoc* —Note by Sir E H East.

[3] *Sed quære de hoc.*—Note by Sir E H East

house during his absence. *Roopchund Tilukchund* v. *Phoolchund Dhurmchund and another.* 27th Dec. 1822. 2 Borr. 616.—W. A. Jones.

28. A sale made by a widow to the prejudice of a son adopted by her under her late husband's authority is invalid, unless made under circumstances of inevitable necessity, even should the sale be made previously to the adoption. *Rajah Kishenmunee* v. *Rajah Oodwunt Singh and another.* 24th June 1823. 3 S. D. A. Rep. 228.—Leycester & Dorin.

29. A Hindú widow succeeded to her husband's estate under his appointment, which authorized her to adopt: her alienation, by conditional sale of a part, was held to be valid against the son by her subsequently adopted, such alienation having preserved the estate from foreclosure under a prior conditional sale by the husband.[1] *Pran Nath Rái* v. *Raja Govind Chandra Rái.* 14th June 1830. 5 S. D. A. Rep. 37.—Ross & Turnbull.

30. Semble, By the law as current in the western provinces, a widow who has no son may sell separate property derived from her husband to the son of her daughter. *Sheoburt Sing* v. *Mt. Ghosa and others.* 10th March 1836. 6 S. D. A. Rep. 60. —Halhed.

31. It was held that a Hindú widow has a power of disposing of the fee where the reversioners to take after her life estate have previously parted with the reversion to her, and that such conveyance of the reversion binds the reversioners' heirs. *Collychund Dutt* v. *Moore and others.* 20th March 1837. 1 Fulton 73.

32. Where a party claimed possession of a *Ráj*, by virtue of a *Wasiyat námeh*, from the widow of a deceased *Zamíndár*, who died without issue, leaving collateral heirs, the Judicial Committee of the Privy Council refused to decide on the validity of the instrument devising the *Ráj*, being of opinion that the *Rání* (the widow) was not competent by law to execute such an instrument to the prejudice of her deceased husband's heirs, and therefore affirmed the decree of the Court below, with costs. *Keerut Sing* v. *Koolahul Sing and others.* 11th Dec. 1839. 2 Moore Ind. App. 331.

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3. *Debts.*

33. A Hindú widow may alienate her husband's property, or a portion thereof, to pay his *bonâ fide* debts; but in order to render such alienation valid, the debt must be proved by documentary evidence, or the testimony of witnesses, the declaration of the widow herself not being admissible. *Hemchund Mujmoodar* v. *Tara Munnee and another.* 18th Dec. 1811. 1 S. D. A. Rep. 359.—Harington & Stuart.

34. By the Hindú law, as current in Bengal, a Hindú widow may, during her son's minority, legally alienate his father's estate, in order to raise means to pay the father's debts and for the support of the family. *Jag Mohan Bose* v. *Pitambar Ghos.* 26th Jan. 1831. 5 S. D. A. Rep. 82.—Turnbull.

35. Where a Hindú widow, the mother of two children, conditionally sold her husband's estate for the purpose of paying off his debts, it was held that, under the circumstances, the sale was illegal in the absence of proof of the absolute necessity for the alienation. *Sheasehal* v. *Bunyad Singh.* 10th Dec. 1838. 6 S. D. A. Rep. 244.—Rattray & Money.

36. It was held that a Hindú widow has no power to grant a deed of release for a debt owing to her deceased husband's estate, he leaving sons him surviving, as they possess a claim on the estate, although

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[1] The decision, in this case, was founded on the merits and the right of the son adopted by the widow subsequently to her alienation of the property, and was not raised in contravention of the alienation.

they had lived separate from the father, where they had not received their shares. And where a person had passed a bond to a Hindú, and after his decease, he leaving sons, had paid the money to his widow, and received a deed of release for the amount from her; it was held that he was still liable to the estate for the amount of the bond, as he should not have paid the money until satisfied that the widow was entitled to receive it, and he must suffer for his imprudence. *Moteechund and others* v. *Khooshal Dulsa and others.* 30th Jan. 1839. Sel. Rep. 154. — Pyne, Greenhill, & Le Geyt.

37. A widow may alienate houses or real property inherited from her husband, provided it be for paying his debts or defraying his funeral expenses, or for any other good and religious object, but always with reservation of any rights possessed by any other persons in the same. *Luhmeeram and others* v. *Khooshalee and another.* 17th March 1818. 1 Borr. 412.—Elphinston & Sutherland.

38. A widow taking on herself the management of her husband's affairs is personally responsible for debts.[1] *Oottumram and another* v. *Hurgovindas Hurjeevundas.* 24th July 1821. 2 Borr. 111. — Sutherland. *Oottumram and another* v. *Mt. Bhanee.* 14th March 1822. 1 Borr. 166. —Romer, Sutherland, & Ironside.

39. Debts incurred by a Hindú widow for charity in honour of her deceased husband, provision of necessaries or subsistence, maintenance of any trade or business left by the husband to his widow's management or engaged in by her, and charity on her own account, are recoverable from the heirs after her death, but they are not liable for any debts unnecessarily incurred by her.[2] *Umrootram Byragee* v. *Narayundas Ruseekdas.* 9th April 1822. 2 Borr. 201.—Romer.

40. A widow has full power over the effects of her late husband so long as she does not contract a second marriage. And where a widow had appropriated such property to the payment of the debts of her deceased husband, and to the expenses incidental to his funeral rites, through the instrumentality of the *Mukaddams* or *Patéls* of their Cast, previously to her contracting a second marriage, the heir of her deceased husband claiming the property from the *Mukaddams*, as reverting to him on her contracting a second marriage, was nonsuited, as it was shewn by them that the property had been legally applied as aforesaid by the directions of the widow, and it did not appear to have remained in their hands, or to have been expended for their use, or in any way that should make them answerable for it: and it moreover appeared in evidence that the widow made over to the heir, on her second marriage, the whole of the jewels, &c. that she had in her possession, and for which he gave her a receipt in full: it was not therefore likely that he would have done this without having received his dues from her. *Bhoolla Khooshal* v. *Sheolal Koober and others.* 15th April 1822. 2 Borr. 264.—Romer.

41. A debt incurred, on her own account, by a widow, a member of a Hindú family, holding joint and undivided property, is not recoverable from the joint estate, but from the widow personally, or from her separate property. *Mt. Sootee Konwur* v. *Punnoo Roy.* 20th March 1837. 6 S. D. A. Rep. 154.—F. C. Smith & Harding.

42. A Hindú woman in possession of property derived from her husband, in which she had a life interest, contracted debts entirely personal, and for purposes of her own. *Held*, that her husband's heirs, on whom the estate devolved at her death, are not responsible for her debts, which can

[1] This as a manager; for a wife living with her husband cannot properly contract debts without his express order. Steele, 38.

[2] Macn. Princ H L. 283, 284

be recovered only from her separate property. *Bungsee Dhur Hajra* v. *Thakoor Pyrag Sing.* 5th Sept. 1842. 7 S. D. A. Rep. 114. — Lee Warner & Dick.

HISSAH NÁMEH.—See ANCESTRAL ESTATE, 6; DEED, 6.

HOMICIDE.

I. ACCIDENTAL HOMICIDE.—See CRIMINAL LAW, 49 *et seq.*

II. BY COMPULSION.—See CRIMINAL LAW, 113. 389.

III. CULPABLE HOMICIDE. — See CRIMINAL LAW, 182, 183.

IV. ERRONEOUS HOMICIDE. — See CRIMINAL LAW, 202 *et seq.*

V. JUSTIFIABLE HOMICIDE. — See CRIMINAL LAW, 335 *et seq.*

HUDD.—See CRIMINAL LAW, 390. 392. 559. 572.

HUK.—See DUFS AND DUTIFS, 6. 19, 20.

HUKÚMAT-I-ADL.—See CRIMINAL LAW, 404.

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HUSBAND AND WIFE.

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3. *Divorce*, 13.
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III. PÁRSÍ LAW.
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VII. IN THE COURTS OF THE HONOURABLE COMPANY, 99.

I. Hindú Law.[1]

1. *Marriage Contract.*

1. No marriage contract is valid, by the rules of Cast and the laws of the Shastra, unless the consent of the parents of both the contracting parties be first had and obtained to the contract. *Nundlal Bhugwandas* v. *Tapeedas and another.* 9th May 1809. 1 Borr. 14.—Duncan, Lechmere, & Rickards.

2. *A* contracted to give his sister in marriage to *B*, brother-in-law of *C*, on condition that *C* would either take *A* to Burhanpoor at his own expense, and get him there married to *D*, or else give him his own daughter in marriage. On the strength of this contract *A*'s sister was given up to *B*, but *C* not only refused to take *A* to Burhanpoor, but endeavoured to get his daughter clandestinely married elsewhere. *C* admitted the contract, but alleged that *A* had broken it by having refused to accompany him to Burhanpoor, on the ground of inability to pay his expenses. The law officers decided that the contract was valid, as *C* had engaged to pay *A*'s expenses; and, moreover, as the girl at Burhanpoor was admitted to be under the age allowed of by the Shastra for betrothal, that *C* was liable to give his daughter in marriage to *A*. The Court decided that *C* should therefore, agreeably to the spirit and letter of his engagement, either give his daughter to *A* or procure him another wife, or, failing to perform either of these conditions within six months, pay him the sum of Rs. 500. *C* refusing to surrender his daughter, and *A* declining a bride procured for him, because her dower was too high, *C* paid the Rs. 500 and costs. *Atmaram Kesoor* v. *Sheolal Mulookchund and another.* 16th Sept. 1809. 1 Borr. 358.—Grant & J. Smith.

3. Under an award of arbitration, a *Mangní* between two persons of the Khumbaití Morh Banyans was declared and decreed to be void, it having appeared that the female had taken back the dower jewels which she gave, under a promise to return them in fifteen days, and as she failed to do so the contract became void. *Huree Bhae Bhuwaneedas* v. *Chundun.* 12th May 1812. 1 Borr. 392.—Crow & Day.

4. A majority of the Cast of Khumbaití Morh Banyans declared it was allowed by their customs to break off a contracted marriage by mutual consent or death. *Ib.*

4. A *Mangní* cannot be set aside, in the Cast of Dusa Nagur Ahmadabadkar Banyans by the uncles of the female. And in a case where they endeavoured so to do, the Court having referred it to the whole Cast, the *Mangní* was declared to be valid, and the uncles were bound in penalties not to marry the female, who was under their guardianship, to any other person than the one to whom she was betrothed. The girl, however, was clandestinely married to another person, and the one to whom she was betrothed (the respondent) recovered

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[1] It is remarkable that there have been no cases relating to the Hindú law of husband and wife reported in the Presidencies of Bengal or Madras: the reader will perceive that, with one exception (a case in the Supreme Court at Calcutta), all the *placita* refer to cases decided in the Adawlut Courts of Bombay. "On the subject of marriage," says Sir W. Macnaghten, "it may be presumed that it has not often constituted a matter of litigation in the Civil Courts, from the circumstance that points connected with it do not appear to have been referred to the Hindú law officers. Disputes connected with this topic, as well as those relating to matters of Cast generally, are, for the most part, adjusted by reference to private arbitration. It is otherwise in the Provinces subject to the Presidencies of Madras and Bombay, where many matrimonial disagreements and questions relative to Cast have been submitted to the adjudication of the established European Courts." For the Hindú law relating to husband and wife, see 2 Coleb. Dig. 377 *et seq.* 1 Str. H. L. 35 *et seq.* 2 Do. 28 *et seq.* 1 Macn. Princ. H. L. 57 *et seq.* 2 Do. 126. 204. May. c. xix. xx. Steele, 30 *et seq.* 161 *et seq.* App. A. 1 *et seq.* For the succession of widows to property see *infra*, Inheritance, 48 *et seq.* Stridhana, *passim.*

damages for loss of character in the Cast, and the amount of the penalties was carried as a fine to the account of Government. This last marriage being declared legal by the Cast, the Court left the respondent to seek redress if he chose, leaving him to find out the proper course himself. *Khooshal and others* v. *Bhugwan Motee.* 24th Feb. 1815. 1 Borr. 138.—Sir E. Nepean, Brown, & Elphinston.

5. A breach of a marriage contract is not permitted in the Cast of Khatrís. *Deochund Natha* v. *Juvehur Behchur.* 24th July 1823. 2 Borr. 528.—Romer, Sutherland, & Ironside.

6. But where a marriage contract was broken, and the father of the girl had married her to another person, and damages had been awarded by the Zillah Judge (Jones) to the other contracting party, the Court held, under the circumstances, that since no case had been made out by which the father of the girl could be justly charged with damages, he had incurred no obligation to discharge by throwing any legal impediment in the way of the marriage; and as the execution of the marriage contract was then impossible, the contract must be annulled, and the Zillah decree reversed. *Ib.*

7. Where *A* sued *B* to compel the performance of a written contract of marriage, *B* urged that a *Mangní* was dissoluble by the rules of their Cast (*Sonís*), when either party was unwilling to fulfil it; but after various contradictory evidence, the Court decreed that *B* should proceed, according to the contract, to marry his daughter to *A*, the latter performing all the conditions to which he might be subject under it. *Kaseeram Joeetaram* v. *Bhugwan Poorshotum.* 17th July 1823. 2 Borr. 432.—Romer, Sutherland, & Ironside.

8. A contract entered into by a brother, with his mother's consent, for the marriage of his sister, was held to be valid, according to the custom of the Dasa Morh Madaliya Banyan Cast. *Mt. Ruliyat and another* v. *Madhowjee Panachund.* 9th March 1824. 2 Borr. 680.—Romer.

9. Where one of two united brothers dies, leaving a widow and a daughter, but no son, the surviving brother has the right of contracting his niece in marriage in preference to the mother; and where the mother had contracted her daughter in marriage in her father's house, alleging that it was done with the consent of her daughter's uncle, the contract was declared void, as had he given his permission for the mother to contract, it ought to have been celebrated at his house. *Kumla Buhoo and another* v. *Muneeshunkur Ichhashunkur.* 3d May 1824. 2 Borr. 687.—Romer.

10. Marriage contracts may be set aside by either party in the Cast of Vurnugur Nagur Brahmans; as, for instance, on failure of payment of dower, or dispute of any kind. *Ib.*

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2. *Actions by and against Husband and Wife.*

(*a*) *For recovery of the person of a Wife.*

11. Where it was found that the appellant had enticed away the respondent's wife, and had been the cause of her not returning to live with the respondent, and since the respondent was a fine healthy young man, free from any defect of mind or body—which alone, according to the Shastra, would warrant a divorce—it was decreed that his wife should be sent back to him on his giving security to treat her with kindness, and that the appellant should pay the damages sued for by the respondent for the loss of his wife, together with the costs of the suit. *Hurka Shunkur* v. *Raeejee Munohur.* 3d Aug. 1809. 1 Borr. 353.—Grant & J. Smith.

(*b*) *For Defamation.*

12. An action cannot be maintained for loss of character by a wife against her husband under the Shastra, be-

cause a woman's husband is like unto her God, and she must remain obedient to his orders, and conform to his will. *Deokoonwur* v. *Umbaram Lala.* 14th Aug. 1811. 1 Borr. 370. —Crow, Day, & Romer.

3. *Divorce.*[1]

13. The respondent betrothed his daughter to the appellant, who, having afterwards contracted a second marriage (by the rite called *Natra*) with another woman, the respondent came forward to compel the appellant either to consent to a divorce from his daughter, or to dissolve the second marriage, and admit his daughter to her rights. It was urged in defence that the appellant was full grown, and the respondent's daughter not arrived at years of puberty; and that, under those circumstances, a second marriage was permitted by the rules of their Cast (Lewa Koonbí). It was held that the appellant's conduct was justified by the rules of the Cast and by the laws of the Shastra; and that the Court could not grant to the respondent either a divorce for his daughter, or an order annulling the second marriage contracted by the appellant with the other woman, and dismissed the suit with costs. *Huree Bhaee Nana and another* v. *Nuthoo Koober.* 20th May 1814. 1 Borr. 59.—Sir E. Nepean, Brown, Elphinston, & Bell.

14. A divorce is permitted to a wife, according to the rules of the Kunsara Cast, in case of ill treatment. *Kaseeram Kriparam* v. *Umbaram Hureechund.* 29th Oct. 1811. 1 Borr. 387.—Crow, Day, & Romer.

14*a*. A divorce will be granted to a woman on account of her husband's dissolute life and bad character, if it be proved to be permitted in such case by the Cast, though the Shastra does not admit of divorce under any circumstances. *Kasee Dhoollubh* v. *Ruttun Baee.* 31st Dec. 1816. 1 Borr. 410.—Prendergast & Sutherland.

15. A member of the Gandharva Cast having married a second wife, the first wife sued for a divorce, or repudiation of the second wife: the Court declared, that unless there were good cause, *Natra* was not permitted amongst them. If both the wives agreed, he might keep them both; but if not, the husband must grant a divorce to the dissenting one. The Court therefore granted a divorce to the first wife.[2] *Munashunkur Khooshal* v. *Mt. Oottum and others.* 5th Sept. 1822. 2 Borr. 524.—Romer.

4. *Dower.*

16. An assignment in lieu of dower is valid; and where, in a suit filed to compel performance of the terms of a conditional deed of sale of a house, by delivering up the house to the appellant, the holder of the deed, passed to him by the respondent, a prior assignment by the respondent's father of the house in question to his own wife, for the sacrifice of her dower jewels to relieve his wants, was pleaded in bar of the claim under the deed in the appellant's possession; the conditional deed of sale of the house at the time belonging to the widow, executed by her stepson, the respondent, to the appellant, was declared to be illegal, and the house was directed to be restored by him to the respondent, on the receipt of the sums advanced by him on the original mortgage. *Nuthoo Bhaee Prannullub* v. *Laldass Jugdeesh.* 20th May 1808. 1 Borr. 8.—Duncan, Lechmere, & Richards.

17. It was held that a Hindú widow cannot imperatively demand her *Pulla,* or dower jewels, from her

[1] See, for the Hindú law of Divorce, 1 Str. H. L. 50. 2 Macn. Princ. H. L. 126. Steele, 39. 173.

[2] When a wife is either drunken, long diseased, mischievous, barren, expensive, abusive, or bears only daughters, let her be superseded by another; also, if she be inimical to her husband. 2 Coleb. Dig. 418. Steele. 37.

father-in-law, without assigning cause, until she has attained the age of thirty years, when she is entitled to possession of it. The *Pulla* is her sole property; but until she attains the above age it is to be taken care of by the paternal relation of her late husband; if none survive, then it must be taken care of by her parents; and if they also be dead, then by some trustworthy relations, *Ich'ha Lukshumee* v. *Anundram Govindram*. 21st Feb. 1814. 1 Borr. 114. —Sir E. Nepean, Brown, & Elphinston.

18. But this decision was afterwards overruled under the *Vyavashta* of the same law officers; and the Court acknowledged the inherent right of a woman to employ her dower for her own use, without being subject to the controul of her relations, so long as she spends it in a good and reasonable manner. *Dhoollubhdas Brijbhookundas* v. *Larkoonwur*. 17th June 1818. 1 Borr. 423. — Elphinston & Romer.

19. It appears that excessive dower is sanctioned by old age in the bridegroom. *Ib.*

20. The father of a woman is bound to restore his daughter's dower to her husband in case of her death without living issue, as the husband in such case is the heir to his wife. *Huree Bhaee Umbaeedas* v. *Jaeedas Keshoordas*. 8th May 1812. 1 Borr. 393.—Crow & Day.

21. Two sons being joint heirs of a Hindú, who also left a daughter unmarried at his death, were held to be bound to furnish her dower out of the family property, to the extent of a twelfth part of the whole. *Laroo* v. *Manikchund Shamjee*. 3d July 1818. 1 Borr. 418. — Elphinston, Keate, & Sutherland.

22. Where a Hindú sued his wife and father-in-law for the production of her dower jewels, which, since their marriage, had never been forthcoming, it was held that they were bound to produce dower jewels to the amount originally agreed upon in the marriage contract, the wife being permitted to retain them in her own custody as her exclusive property. *Muyaram Rajaram and another* v. *Govind Ruttunjee*. 18th March 1822. 2 Borr. 245.—Romer.

23. Where the son of a person who had put away his wife on a separate maintenance claimed to oblige her to give security for her dower, which he suspected was being expended and made away with, his claim was disallowed, on the principle that a woman is sole mistress of her dower. *Manukchund Premchund* v. *Mt. Premkoonwur*. 18th June 1822. 2 Borr. 321.—Sutherland.

24. A Hindú widow is liable for the return of the dower of her first marriage to the heirs of her first husband should she contract a second marriage. *Treekumjee Laljee* v. *Mt. Laroo and another*. 15th Aug. 1822. 2 Borr. 361.—Romer, Sutherland, & Barnard.

25. A claim by a wife against her husband, from whom she had separated, for a maintenance, and the recovery of her dower jewels taken from her by him, was allowed, the wife proving her case, and the husband failing to substantiate the assertions made in his pleadings. *Wulubhram Oomayushunkur* v. *Bijlee*. 18th Feb. 1823. 2 Borr. 440. — Romer.

26. Credit given by a bride's father in his accounts to the bridegroom's family for his daughter's dower was held not to amount to delivery of the dower. *Munohurdas Boolakheedas* v. *Lukmeedas Tooljaram*. 26th March 1823. 2 Borr. 629.—Ironside.

27. Dower actually paid by the father-in-law may be demanded on his daughter's death. *Ib.*—Anderson.

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5. *Marriage of Lunatics.*

28. By the Hindú law, the marriage of a lunatic *à nativitate* is immoral, but valid by the consent of the parents. But if the party become

lunatic after his birth, and marry during his lunacy, such marriage, under any circumstances, is good, even though without family consent. *Dabychurn Mitter and others* v. *Radachurn Mitter*. 10th Feb. 1817. East's Notes. Case 60.

II. Muhammadan Law.

1. *Marriage.*

(*a*) *Generally.*

29. Supposing a Muhammadan to have married four slave girls, and then a free woman, the last marriage is good, and is not a fifth marriage, for marriage with slave girls is of no effect in law.[1] *Gholam Husun Ali* v. *Zeinub Beebee*. 20th July 1801. 1 S. D. A. Rep. 48. — Lumsden & Harington.

30. A man may not marry his wife's sister, his wife being alive: no defect, however, arises in the first marriage from the invalidity of the second; and on the death of the husband the whole dower of the first wife is claimable out of his property.[2] *Mt. Shureef Oonisa* v. *Mt. Khizur Oonisa Khanum and others*. 5th Feb. 1823. 3 S. D. A. Rep. 210.— Dorin.

31. A Musulmán cannot legally have more than four wives at the same time.[3] *Mt. Shumsoonisa* v. *Meer Gohur Ali and others*. 27th Nov. 1827. 4 S. D. A. Rep. 283.— Sealy.

32. A second marriage of a woman during her first husband's lifetime is invalid, if no divorce have taken place; and such second marriage forms no bar to the recovery of her person by her first husband, on civil action, notwithstanding her unwillingness to go back to him.[4] *Mt. Ameena and others* v. *Kuttoo Khan*. 20th April 1841. 7 S. D. A. Rep. 27.— Lee Warner & D. C. Smyth.

33. A Muhammadan feme-covert may sue, or be sued, alone. *Bibee Ameerun* v. *Shaik Dawood*. 1st Term 1843. 1 Fulton, 143.

2. *Marriage Contract.*[5]

34. It appears that a *Mangní* between Muhammadan parties will be annulled where the woman is unwilling to fulfil the contract. The evidence of the Cast (Musulmán goldsmiths) in this case as to the legality of annulling a *Mangní* was extremely contradictory. The law officers declared, that if, at the time of contract, the girl were willing, but not of perfect womanhood or understanding; or if being of perfect womanhood and understanding, words signifying agreement and consent had not passed between her mother, herself, and her

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[1] 1 Hed 84. 87. Macn. Princ M. L. 57. par. 11. 259. case xi. Marriage of a freeman with a slave, not being his own property, is admissible, provided he be not already married to a free woman. Sir W. Macnaghten has quoted a precedent similar to the above case, Princ. M. L. 259; and adds in a note, that "had the person alluded to in the question married only one female slave, the property of another individual, he could not subsequently have married a free woman."

[2] For the prohibited degrees, that is to say, of women whom it is lawful to marry, and of those with whom marriage is lawful, see 1 Hed. 76 *et seq*. Macn. Princ. M. L. par. 9, 10. A similar case to the above is given by Sir W. Macnaghten, Princ. M. L. 257, case x.; and in a note the learned author says, "Had the two sisters been married by the same man at the same time, or had the priority of one or the other marriage not been ascertainable, they would both have been invalid. This supposes the former wife to be alive, and the marriage not to have been dissolved. There is no objection, in the Muhammadan law, to a man's marrying the sister of his deceased or divorced wife. The above doctrine is contained in the *Mohect-oo-Surukhsee*, cited in the *Futawa-i-Aulumgeeree*." And see 1 Hed. 79. as to marrying two sisters.

[3] 1 Hed. 88. Macn. Princ. M. L. 57. par. 8. 255. case vii. A slave can only have two wives.

[4] Macn. Princ. M. L. 260. case xii.

[5] The Muhammadan law of marriage contract will be found in 1 Hed. 72 *et seq*. Macn. Princ. M. L. 58. par. 14. 16. 18. 252. 264. 267, 268.

proposed husband, in the presence of two witnesses; and if afterwards she should be unwilling to celebrate the marriage; then the contract was void; for this reason, that the consent of the woman is one of the points necessary to perfect a marriage.[1] *Jumal Bhaee Kumal Bhaee Sonee* v. *Sahib Buhoo.* 1st May 1820. 2 Borr. 556.—Anderson.

35. A Muhammadan woman, of her own accord, contracted herself to *A*, and lived with him six months, and, together with her mother and sister, was maintained by him: she afterwards left *A*, and got married to *B*, to whom she had been previously contracted. It was held that she was liable for the repayment of all monies expended on her during her residence with *A*. *Lalun Buhoo Sonarin* v. *Jeevun Hashum Sonee.* 3d July 1823. 2 Borr. 553.—Romer, Sutherland, & Ironside.

36. It was held that a Muhammadan girl, when she arrives at the age of puberty, is at liberty to marry whom she pleases; and if her parents have previously contracted her in marriage, and she should not, on arriving at such age, approve of such marriage, the contract would not be good in law.[2] *Kureem Jeewun* v. *Mt. Muriyum.* 5th July 1821. Sel. Rep. 56.

37. Where a Muhammadan girl had been contracted in marriage by her mother, and, on arriving at the age of puberty, had refused to fulfil the contract, it was held that she was justified in refusing, but that the betrothed husband was at liberty to sue the mother for breach of the engagement made by her to marry her daughter to him.[3] *Ib.*

38. According to the Muhammadan law, a *Nikáh*, or betrothal, made by a father of his daughter during her minority, cannot be set aside by her on coming of age; but she is justified in not leaving her parents without first receiving the exigible dower.[4] *Mt. Fukhronissa and another* v. *Shah Ally Ruzzah.* 24th June 1840. 6 S. D. A. Rep. 293.—Lee Warner & D. C. Smyth.

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3. *Marriage Settlement.*

39. A *Kabín námeh*, or deed of marriage settlement, containing a gift by the husband to his wife of the whole property possessed by him, or which might thereafter come into his possession, is valid, under the Muhamman law, in regard to the property in the actual possession of the husband, but not in regard to that which is non-existent.[5] *Oojudhea Beebee and others* v. *Mohunbeebee and another.* 30th June 1835. 6 S. D. A. Rep. 30.—Braddon & Stockwell.

40. A *Kabín námeh* is invalid in

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[1] A girl not having attained the age of puberty cannot contract herself in marriage without the consent of guardians; but she may do so without such consent, if she have attained such age. Macn. Princ. M. L. 58. par. 14. 16. But should she have contracted herself, not being of nubile age, the guardians should interfere before the birth of issue. Ib. par. 17. A damsel under age, contracting herself in marriage to an equal, and the guardian afterwards allowing such marriage, may annul the contract immediately on becoming of age, but not afterwards. Ib. 264. Nor if she had, during her minority, been married by her father, or paternal grandfather. Ib. 58. par. 18. 265. case xvi. The distinction between the case of a female who has attained the age of puberty contracting marriage, and one who has not attained that age, is, that in the former case the marriage is valid, but voidable by the guardians where inequality appears; and that in the latter case the contract is void *ab initio*, if entered into without the consent of the guardians, but such consent may be implied as well as express. Ib. 268, note.

[2] Macn. Princ. M. L. 58. par. 14. 266. case xvii.

[3] A written engagement to marry is not binding, but any sum paid in consideration is recoverable. Macn. Princ. M. L. 252.

[4] 1 Hed. 150.

[5] The deed, in this case, was looked upon as simply a deed of gift, and justly so: the decision proceeded, therefore, on the ground that, by the Muhammadan law, property non-existent cannot be made the subject of gift, whether in lieu of dower or otherwise.

respect to property not in the possession of the husband at the time of the execution of the deed. *Noor Buxsh Chowdree* v. *Mt. Arif Chowdree.* 10th March 1843. 7 S. D. A. Rep. 123.—Tucker, Reid, & Barlow.

40 *a*. It was held that a *Kabín námch* is invalid if the property conveyed by it be not specified. *Kadir Dad Khan* v. *Nooroonissa.* 17th April 1844. 7 S. D. A. Rep. 158.—Reid & Barlow.

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4. *Actions by and against Husband and Wife.*

41. A husband may recover the person of his wife by civil action.[1] *Maulvi Abdul Wahab* v. *Mt. Hingu and another.* 5th May 1832. 5 S. D. A. Rep. 200.—Turnbull & Ross.

42. Where a Muhammadan woman had obtained a decree against her husband for the recovery of her dower, but which decree had not been executed, nor the dower paid, and he brought an action against her to compel her to come and live with him against her will; it was held, that, according to the Muhammadan law, it is not imperative for a wife to reside with her husband until her dower is paid; and the husband was nonsuited and made liable for all costs.[2] *Mt. Dosun Beebee* v. *Sheik Munoo Sheik Ucchun.* 9th May 1832. Sel. Rep. 103.—Ironside, Baillie, & Henderson.

43. A contract made by a man with a first wife not to marry a second wife is not illegal, and an action may be sustained if damages can be proved. *Beebee Hurron* v. *Shaik Khyroollah.* 16th March 1838. 1 Fulton, 361.

44. A second marriage of a woman, during her first husband's life, and without having been divorced by him, is no bar to the recovery of her person by her first husband, on civil action, notwithstanding her unwillingness to return to him. *Mt. Ameena and others* v. *Kuttoo Khan.* 20th April 1841. 7 S. D. A. Rep. 27.—Lee Warner & D. C. Smyth.

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5. *Divorce.*

(*a*) *When demandable.*

45. By the Muhammadan law, divorce is not demandable as a right, by the wife, on payment of a consideration.[3] *Maulvi Abdul Wahab* v. *Mt. Hingu and another.* 5th May 1832. 5 S. D. A. Rep. 200.—Turnbull & Ross.

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6. *Dower.*[4]

(*a*) *Generally.*

46. Where *A* claimed half of his late father's estate, but it appeared that the deceased had settled a dower of 300,000 gold mohurs on the mother of another son, *B*, which at her death (before her husband) was demandable by her heirs; it was held that the husband, one of those heirs, takes ten annas of her property (*i. e.* of the dower due), and *B*, her son, six annas[5]: these six annas, therefore, of the dower, were now demandable by *B* from the paternal estate; and as the amount was greater than the whole estate, and claims of dower must be satisfied before partition of heritage,[6] *A*'s claim of inheritance, in consequence, will not avail. *Gholam Husun Ali* v. *Zeinub Beebee.* 20th July 1801. 1 S. D. A. Rep. 48.—Lumsden & Harington.

47. The widow of a Muhammadan declared his landed estate to have been given by him in his lifetime to

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[1] This doctrine was pronounced on the ground that a wife has no right to separate herself from her husband, unless by reason of a divorce.

[2] 1 Hed. 150.

[3] But a wife is at liberty, with her husband's consent, to purchase from him her freedom from the bonds of matrimony.

[4] For the law of Dower, see 1 Hed. 122 *et seq.* Macn. Princ M. L. 59, par. 20, 21, 22. 131. 171. 273 *et seq.* 281. 284. 287, 288. 291. 294. 356. 365.

[5] 1 Hed. 155, 156.

[6] Macn. Princ. M. L. 131. case lxii.

a grandson, in whose favour she fabricated a deed of gift, as from her husband, which deed was set aside in a suit brought by one of the other heirs against the grandson. Afterwards, at the suit of the widow for the lands, in satisfaction of dower, as being the estate left by her husband, which the defendant admitted they were, and pleaded that the widow had remitted her dower, the law officers declared the claim barred by estoppel, because the widow, by her allegation of the gift, had virtually declared that the lands were not the estate left by her husband, and could not now claim them as being so. The Sudder Dewanny Adawlut doubted the application of the doctrine to the case; but on the presumption, arising from the widow's declaration of the gift, that she must have remitted her claim of dower, dismissed the suit. *Beebee Munwan* v. *Meer Nusrut Ali.* 6th June 1803. 1 S. D. A. Rep. 64.—H. Colebrooke & Harington.

48. A written acknowledgment of the husband to one of his wife's heirs, after her death, was held to be sufficient proof of the amount settled upon her as dower.[1] *Ali Buksh Khan* v. *Kaeem Beebee.* 24th Aug. 1804. 1 S. D. A. Rep. 83.—H. Colebrooke & Harington.

49. Judgment was given for the daughter of a deceased Muhammadan against the male relatives in possession of his estate for a half share of the dower of her mother, unpaid during the life of the mother, whom the father survived, such dower being in law the mother's estate, recoverable by her heirs from the property of the husband. *Ib.*

50. Where the heirs of a Musulmán deceased claimed a share of his estate against his widow, who took the whole estate in satisfaction of dower, the principal ground of the claim, viz. that the amount of the dower, which absorbed the whole estate, was excessive, and therefore illegal, was rejected by the Sudder Dewanny Adawlut, as, by the Muhammadan law, excessive dower, however improper, is not illegal, and judgment was accordingly given, dismissing the claim. *Wujih On Nisa Khanum* v. *Mirza Husun Ali.* 30th Dec. 1808. 1 S. D. A. Rep. 266.—Harington & Fombelle.

51. The dower due to a widow, on her husband's death, is payable from his estate, in preference to all claims of inheritance. *Ib.*

52. Landed or other immoveable property left by the husband cannot be taken by the widow in satisfaction of her claim of dower, without the consent of the heirs or competent judicial authority.[2] *Ib.*

52 *a.* Moveable property, however, may be taken by her, as far as the heirs are concerned, but not to the prejudice of other creditors, in payment of dower indisputably due. *Ib.*

53. One of the heirs of the husband, having for several years acted as manager for his widow, who had taken possession of her husband's landed estate in satisfaction of her dower, while none of the other heirs preferred any claim to the estate, may be considered as sufficient evidence of consent, on the part of the heirs, of the widow's right. *Ib.*

54. Where a Muhammadan, shortly before his death, made over his share of a *Talook* to his widow, in satisfaction of dower settled on her at marriage, and she held it till her decease (thirty-three years), without her title being disputed by any of the heirs of

[1] Dower is due on the consummation of marriage, unless deferred by the terms of the settlement to a future period; and after the death of the parties the heirs of the wife are entitled to take the dower out of the husband's estate, deducting the husband's portion as one of the wife's heirs, if she die before him. 1 Hed. 123. 150 155, 156.—Macn. The widow's heirs may claim her dower at any time. Macn. Princ. M. L. 287. And the dower of a deceased woman is even claimable by her grandchildren, notwithstanding any lapse of time. *Ib.* 365.

[2] Macn. Princ. M. L. 291. case xxxvii.

her late husband; it was held that her heirs were entitled to inherit such share, as having belonged to her. *Mirza Moohummud and another* v. *Jareut Oz Zohra Begum and others.* 22d July 1808. 1 S. D. A. Rep. 243.—Harington & Fombelle.

55. By the Sunníy doctrine, according to *Abú Hanífah*, the extent of dower is not limited: the parties may extend it by agreement to whatever amount they please.[1] *Omdutoon Nisa Begum* v. *Mirza Asud Ali.* 19th May 1809. 1 S. D. A. Rep. 276.—Crisp & Fombelle.

56. In a suit by an heir of the son of *A* against the widow of *A* for a share of his estate, as joint heir with the widow, to which the widow pleaded that the whole estate fell to her in payment of dower, there being proof that she had received, in part of her dower, the property possessed by the husband at his marriage, and that she afterwards remitted her claim to the residue; it was held, that under such circumstances the property acquired by *A* after marriage was his estate, hereditable by his heirs; and judgment was accordingly given for the claimant's obtaining the share due to him as an heir of the son of the deceased. *Ahmud Ollah and another* v. *Behar Ullah.* 7th Aug. 1809. 1 S. D. A. Rep. 284.—Harington & Fombelle.

57. Where a claim had been preferred against the widow of a Musulmán, by his sister, for half the property left by him, which was finally adjudged to be her right, in lieu of dower; and twenty-one years after that decision the same plaintiff brought an action against the same defendant for half of the same property, on the plea that, even supposing the dower to have amounted to the sum claimed, she had realised the full amount from the profits of the estate; it was held that the claim was inadmissible. *Sahib Jan Khatoon* v. *Dianut Beebee and others.* 9th Feb. 1820. 3 S. D. A. Rep. 12. —Fendall & Goad.

58. The heirs of a Musulmán recovered their shares in his estate, against his widow who had taken the same. The widow pleaded a set-off for dower debt equal to the value of the entire estate; but the Court were of opinion that the claim of dower was distinct and unconnected with the case under consideration, and should be brought forward in another suit. *Ranee Bukhsh Bebee* v. *Nadir Beebee.* 11th Dec. 1820. 3 S. D. A. Rep. 59.—C. Smith.

59. *A* instituted an action to recover from *B* (the widow of a Musulmán) her share of the deceased's estate, which she claimed by right of inheritance. *B* repelled the claim by a plea of dower due to her under a settlement which had exhausted the assets. The deed of settlement, however, appearing suspicious, it was held that the counterclaim of *B* for dower could not be satisfied, and judgment was passed accordingly, with costs, in favour of *A*, without prejudice to the right of *B* to establish her claim as dower creditor. *Mt. Omdah Begum* v. *Mt. Hoseni Begum.* 15th March 1831. 5 S. D. A. Rep. 98.—Turnbull.

60. When marriage presents are sent and delivered by a Muhammadan to his wife, with due notice at the time that they are sent in lieu and satisfaction of dower, so far as their value extends, the formal acknowledgment to that effect, by the wife or her friends, was not held to be necessary. But where there was a want of proof on the husband's part of the delivery of the marriage presents, the

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[1] In this case the law officers rightly stated that, according to the doctrine of *Abú Hanífah* ten *Dirhems* is the smallest dower. 1 Hed. 122. Macn. Princ. H. L. 59, par. 20 276 case xxv; and they added that "amongst the Shías the lowest and highest rate is not fixed any thing possessing a legal value may lawfully be given as dower; but the proper dower is 500 *Dirhems*. a greater sum is not illegal, although, according to some of the lawyers of that sect, it is improper."

Court held that the wife was entitled to obtain from him possession of her dower. *Shekh Uzeez Oolla* v. *Ghufoor Beebee*. 23d May 1822. 2 Borr. 258.—Romer, Sutherland, & Ironside.

61. A Muhammadan may alienate land to his wife in compensation for her dower, and the heirs have no claim upon it; for this reason, that dowry is a debt, and debts must be first liquidated out of an estate. *Mt. Beebee Sahib* v. *Dada Bhaee Rajun*. 19th June 1822. 2 Borr. 520.—Romer, Sutherland, & Ironside.

62. In a disputed claim for land by Muhammadans, one party claiming under a deed of gift passed by the original possessor, and the other on the plea that the first owner had alienated it to his wife in lieu of dower, he being the heir of such wife; the Court decided, that as the deed was evidently a forgery, and as, though the alienation was not proved, it was probable, from the subsequent possession of the property in that line, that the party claiming under the alienation to his ancestor was entitled to the property. *Ib.*

63. Where the heir of a widow claimed her dower from her late husband's estate, under a deed executed by him before the Company's accession to the *Díwání*; it was held that such claim was inadmissible, the truth of the demand not having been acknowledged within twelve years prior to the institution of the suit.[1] *Moohummud Yar Khan* v. *Moohummud Eesau Khan*. 6th Jan. 1824. 3 S. D. A. Rep. 292.—Leycester & Harington.

64. Where a claim was made to certain lands, in satisfaction of dower, there being no other assets, the Court awarded possession of them to the widow, if they did not exceed in value her proper dower,[2] or such as would be proportionate to the rank and circumstances of her family, although no deed of dower might be forthcoming. *Uzeezoo Nisa* v. *Culub Ali Khan*. 25th March 1824. 3 S. D. A. Rep. 321.—J. Shakespear.

65. A verbal contract for dower is valid by the Muhammadan law, even by a minor who is an adolescent:[3] the use of deeds is only for a securer record. *Abdul Karim* v. *Mt. Fazilat-un-Nissa*. 13th Dec. 1830. 5 S. D. A. Rep. 75.—Turnbull & Sealy.

66. It is not imperative upon a woman to live with her husband until the amount of her dower has been paid; and where a Muhammadan

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[1] See *supra*, Pl. 49. In that case judgment was given for the daughter of a deceased Muhammadan against the male relatives in possession of his estate, for a half share of the dower of her mother, unpaid during the life of the mother, whom the father survived. But it appeared in evidence that the father, subsequently to his wife's death, and not twelve years before the institution of the suit, had acknowledged the debt of dower to be due. There does not appear to have been any case yet decided in which prescription from length of time has been held sufficient to bar the claim of a wife to her dower: should such case occur, the *reverentia maritalis* might possibly be considered to operate in her favour, agreeably to the doctrine of the Scotch law. See Erskine's Principles, 369. But with respect to the heirs of widows, or even, perhaps, to the case of widows themselves, who may have suffered a long period to elapse after the death of their husbands, the rules of limitation may be strictly applicable.—Macn. The Muhammadan law, however, exempts claims for dower, by the widow or her heirs, from any limitation as to time; and Sir W. Macnaghten's reservation in the above note, though perhaps politic and just, is at variance with the principles of Muhammadan law.

[2] For the estimate of proper dower, see 1 Hed. 148. The term "proper dower" signifies the average amount received by females of the same family as their dower. Macn. Princ. M. L. 276. case xxv. note.

[3] It was presumed, from the evidence in this case, that the marriage had been consummated, notwithstanding the youth of the parties; otherwise only half dower would have been claimable. The opinion of the law officer as to the adolescent's power and liability was given without reservation; but it may be remarked, that, in this case, the uncles and tutors of the minor were present at the time of making the contract,—a verbal one,—and assented thereto.

woman had obtained a decree against her husband for recovery of her dower, but which decree had not been executed, nor the dower paid, and he brought an action to compel her to come and reside with him, he was nonsuited, and made liable for all costs.[1] *Mt. Dosun Beebee* v. *Sheik Munnoo Sheik Ucchun.* 9th May 1832. Sel. Rep. 103.—Ironside, Baillie, & Henderson.

67. In an action brought by the widow of a Musulmán against his heirs for dower, they having ousted her from possession of his estate, which she had taken in satisfaction thereof; it was held that she was entitled to the amount claimed, though she had not sued until twenty years after the death of her husband.[2] *Shaikh Bibi* v. *Rani Bakhsh Bibi.* 24th March 1834. 5 S. D. A. Rep. 105.—Turnbull.

68. Held, that the widow of a deceased Musulmán cannot take possession of his real estate, in lieu of dower, without the consent of the heirs, or a judicial decree.[3] *Mt. Wuzeerun* v. *Mohammed Hossain Khan.* 7th June 1841. 7 S. D. A. Rep. 34.—Rattray.

(*b*) *Settlement in lieu of Dower.*

69. A *Kabín námeh,* or deed of marriage settlement, by a Muhammadan to his junior wife, for a moiety of his estate, was held to be invalid, it appearing that he had previously settled his entire estate on his senior wife, in lieu of dower, and that the deed in question had been executed without her permission duly obtained. *Mt. Banoo Beebee and another,* v. *Fukheroodeen Hosein.* 3d May 1816. 2 S. D. A. Rep. 180.—Harington & Fombelle.

70. But if the senior wife had executed an *Ikrár námeh* in favour of the junior wife, thereby granting permission to their husband to make over a moiety of the property in lieu of dower to the junior wife, and he had accordingly settled such moiety on her, such act would have been legal and valid, it resembling the act of an agent confirmed by his constituent. *Ib.*

71. Where a Musulmán settled certain property upon his first wife in lieu of dower, but without specification in the dower deed, which merely stated "the whole of his property," and on her death married a second wife, to whom he executed a deed of *Bay Mohasa,* or barter, of a portion of the same property in lieu of the dower settled upon her; it was held, that as the property had been separated from the husband's estate, and transferred to the possession of the first wife before the second marriage took place, the *Bay Mohasa* was invalid; but that it would have been valid, and the second wife entitled to the portion of the estate mentioned therein, had no such separation taken place up to the period of the second marriage. *Shaik Futteh Ali* v. *Mt. Janwa.* 18th July 1837. 6 S. D. A. Rep. 178.—Harding.

(*c*) *When demandable.*

72. Where, in a marriage of two minors, the legal guardian of the husband not having been present at the marriage, and not having given his consent to the dower, and the husband on coming of age had not confirmed his acknowledgment of the dower; it was held that the dower was not demandable from the husband. *Mt. Kureem-oo-Nissa* v. *Ruheem Ali.* 8th March 1817. 2 S. D. A. Rep. 233.—Oswald.

74. Unless the contrary be specified, dower must be considered as immediately demandable, and, till paid, cohabitation cannot be enforced. *Abdul Karim* v. *Mt. Fazilat-un-Nissa.*

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[1] 1 Hed. 150.

[2] There is no limitation in regard to a claim for dower by a widow or her heirs.

[3] But had there been no dispute as to the dower, and no doubt that its amount entirely absorbed the estate, the law would have sactioned a different decision. Macn. Princ. M. L. 275. case xxiii.

13th Dec. 1830. 5 S. D. A. Rep. 76.—Turnbull & Scaly.

75. Semble, Before the consummation of a marriage half dower is only demandable from the husband. *Ib.*

76. But where the appellant admitted that the respondent was his wife, and that he had been in the habit of frequenting her residence, it was thought to be conclusive, and to render any inquiry unnecessary as to the fact of consummation. *Ib.*

(*d*) *Exigible Dower.*[1]

77. A girl, betrothed by her father during her minority, cannot set aside such betrothal on her coming of age. It is competent, however, to the woman to refuse to leave her parents without payment of the *Mahr Maujjil*, or exigible dower, settled upon her at the time of her betrothal.[2] *Mt. Fukhronissa and another* v. *Shah Ally Ruzzah.* 24th June 1840. 6 S. D. A. Rep. 293.—Lee Warner & D. C. Smyth.

78. Exigible dower, not demanded during the period limited by the regulations for the cognizance of actions, cannot be subsequently recovered. *Meer Nujib Ollah* v. *Mt. Doordana Khatoon.*[3] 21st Aug. 1805. 1 S. D. A. Rep. 103.—Harington & Fombelle. *Noorunissa Begum* v. *Nawaub Syed Mohsin Allee Khan.* 26th June 1841. 7 S. D. A. Rep. 40.—Tucker.

(*e*) *Dower not exigible.*

79. Dower not exigible (*Muwajjal*) is not recoverable until the death of the husband, or the dissolution of the marriage by divorce, which last must be proved; and the mere fact of the husband and wife living separately is not sufficient evidence. *Noorunissa Begum* v. *Nawaub Syed Mohsin Allee Khan.* 26th June 1841. 7 S. D. A. Rep. 40.—Tucker.

(*f*) *Shía Law.*

80. Where, on a marriage between parties of the Shía sect of Muhammadans, the sum of Rs. 500 was verbally specified as the amount of dower at the reading of the ceremony in the Shía form, but a deed of settlement was executed by the husband for a much larger sum; it was held that the sum specified in the deed was the sum demandable. *Omdutoon Nisa Begum* v. *Mirza Asud Ali.* 19th May 1809. 1 S. D. A. Rep. 276.—Crisp & Fombelle.

81. Exactly the same point was subsequently decided in another case, in which the Court remarked, that, agreeable to the doctrines both of the Shía and Sunníy sects, it is optional with the parties contracting a marriage to fix the amount of dower either before or after reading the marriage ceremony. *Mt. Rahut Oonissa* v. *The Heirs of Mirza Hizubr Beg.* 15th Nov. 1816. 2 S. D. A. Rep. 198.—Ker & Oswald.

82. Semble, Among the *Shías* the lowest and highest rate of dower is not fixed: any thing possessing a legal value may be given as dower; but the proper dower is 500 *Dirhems:* a greater sum is not illegal, although considered improper by some Shía lawyers. *Omdutoon Nisa Begum* v. *Mirza Asud Ali.* 19th May 1809. 1 S. D. A. Rep. 276.—Crisp & Fombelle.

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[1] On the subject of *Mahr Maujjil* and *Mahr Muwajjal*, that is, dower, exigible and not exigible, sometimes also called prompt and deferred, respecting which there is much difference of opinion amongst the Doctors, see 1 Hed. 150, 151. Macn. Princ. M. L. 59. par. 22. 278, case xxix. and note.

[2] 1 Hed. 150.

[3] In this case the widow was held to be entitled to two-thirds of the dower claimed, one-third only being *Maujjil* (or payable on her marriage), the recovery of which was barred by the rule of limitation, and the remaining two-thirds being *Muwajjal* (not exigible during the continuance of marriage), and payable on the death of her husband, which happened only six years before the action.

III. Pársí Law.

1. *Marriage.*

83. A Pársí cannot contract a second marriage during the life of his first wife, unless there be a sufficient cause, originating either from disease, imbecility of mind, adultery, or incapacity from age, to justify the procedure. And where a Pársí had neglected his first wife, and contracted a second marriage, he was not only enjoined by the Court to receive his first wife into his family, to afford her his protection, and to reinstate her in all conjugal rights and privileges, but he was also required to put away his second wife, and keep her apart; and all costs were awarded against him. *Mihirwanjee Nushirwanjee* v. *Awan Baee.* 16th March 1822. 2 Borr. 209.—Romer, Sutherland, & Ironside.

84. It appears, however, that a Pársí may contract a second marriage if his first wife be old and barren, and give consent to her husband marrying again, but not without. *Kaoosjee Ruttunjee* v. *Awan Baee.* 16th Dec. 1817. Cited in 2 Borr. 218.—Keate & Sutherland.

2. *Marriage Contract.*

85. A *Mangní* between two Pársís was declared, on reference to a *Pancháyit* including the *Modí* and *Dastúr*, to be indissoluble according to the customs of the Pársís, even where the betrothed husband was a notoriously bad character, and the woman, on that account, had the greatest repugnance to the match. *Nowrosjee Khoorshedjee* v. *Dhuna Baee.* 15th May 1811. 1 Borr. 382. — Crow, Day, & Romer.

3. *Alimony.*

86. Pársís being subject to English law generally, it follows, that as a Pársí husband is liable for the debts of his wife, and absorbs his wife's property, a Pársí wife is entitled to alimony on exactly the same principles as an English wife would be if she claimed it. *Buchooboye* v. *Merwanjee Nasserwanjee.* 8th Aug. 1844. Perry's Notes. Case 15.

87. *Quære,* Whether a Pársí husband can pronounce a divorce from his wife, she refusing to allow him to consummate the marriage? *Ib.*

88. In a suit for temporary alimony, brought by a Pársí woman against her husband, it was held that she, having neglected to examine witnesses to shew what were her husband's means, will be considered an assenting party to his affidavit as to their amount. *Ib.*

4. *Dower.*

89. A Pársí disagreeing with his wife cannot retain her clothes and jewels against her will. *Kaoosjee Ruttunjee* v. *Awan Baee.* 16th Dec. 1817. Cited in 2 Borr. 218.—Keate & Sutherland.

90. Nor can he compel his wife to enter into security for the amount of the value of dower in her possession, as the property in question belongs to her of right, and is not in its nature subject to the controul of her husband. *Mihirwanjee Nushirwanjee* v. *Awan Baee.* 16th March 1822. 2 Borr. 209. Romer, Sutherland, & Ironside.

91. In an action by a Pársí to recover the dower of his deceased wife (from whom he had separated) from her brother, to whom she had bequeathed it, it was decreed that, in the absence of proof that the property constituting her dower was derived from her husband, and on the opinion of the Pársí *Pancháyit* that the will under which his brother-in-law claimed was valid, that the appellant should be nonsuited, and made liable for all costs. *Burjorjee Bheemjee* v. *Ferozshaw Dhunjeeshaw.* 10th Sept. 1839. Sel. Rep. 206. — Giberne, Pyne, & Greenhill.

IV. Sikh Law.

92. A marriage of a Sikh Khythy[1] man and woman in Bengal, according to their own rites, is valid, and the offspring of such marriage will inherit. The essential part of a marriage appears to be the contracting part, the rest being merely ceremonial; and the *Anand* form of marriage, as practised by the Sikhs, was held to be a valid marriage in Bengal, although unknown to the Hindú law. *Doe dem. Juggomohun Mullick and others* v. *Saumcoomar Beebee and others.* 29th March 1815. East's Notes. Case 31.

V. Armenian Law.

93. An Armenian widow was decreed her dower out of lands in the Mofussil. *Emin* v. *Emin.* Cited in 1 Fulton, 227.

94. Where an Armenian woman, who had twice separated from her husband, claimed against him for a future maintenance, and payment of debts contracted during her former separation, the Court held that she was entitled to a maintenance proportioned to the fortune of the husband, to commence from the date on which she began to live apart from him the second time, but the payment of debts was not awarded against him. The husband was decreed, under Sec. 10. of Reg. I. of 1816[2], to pay one-third of the woman's pleader's fees, and half of the fees of his own pleader, each bearing the expense of their own stamped paper. *Humrus* v. *Humrus.* July 1822. 2 Borr. 496.—Romer, Sutherland, & Ironside.

VI. In the Supreme Courts.

1. *Generally.*

96. A marriage in the out-stations, in the year 1805, was held to be sufficiently proved by the production of the original certificates of the marriage in the handwriting of the officiating chaplain of the Company, sent down from Lucknow for the purpose of being registered in the books of marriages, &c., at St. John's Cathedral, at Calcutta, and taken off the file of such certificates. *Cunliffe* v. *Loftus.* 2d April 1818. East's Notes. Case 80.

97. The right of a widow to dower was recognized by the Court. *De la Cruz* v. *Goorachund Seal.* Cl. R. 1829. 335.

98. An action of trespass upon the case for criminal conversation is sustainable in the Supreme Court between Hindú parties. *Soodasun Sain* v. *Lochenauth Mullick.* 4th July 1839. Mor. 107.

VII. In the Courts of the Honourable Company.

99. A decree in favour of a Jewess for dower against her bankrupt husband was decreed to be executed in preference to all judgments upon debts contemporaneous with the assignment of dower. *Sookhlal Ruttunchund* v. *Mt. Ruheema Buhoo.* 24th July 1823. 2 Borr. 632.—Romer, Sutherland, & Ironside. *Mt. Ruheema Buhoo* v. *Suhoorabjee Buhramjee. Ib.*

100. Property settled upon a wife previously to her marriage, and placed in trust to her use and behoof in the hands of trustees under a deed of settlement, is barred from being taken in execution of a decree obtained against the husband. In the absence of such settlement, the claim of the wife, as a third party, to property seized and attached for sale in satisfaction of a decree obtained against the husband by a judgment creditor, was disallowed by the Sudder Dewanny Adawlut on a summary appeal. *Eliza Johnston, Petitioner.* 23d Sept. 1844. 2 Sev. Cases, 129.—Reid.

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[1] *Quære,* Kshátriya.

[2] Rescinded by Reg. I of 1827.

HUZÚRÍ MAHÁLL.

1. At the decennial settlement several *Zamíndárs* contracted in the same engagement for distinct villages, on which parts of the gross *Jama* were assessed. Ruled, that each parcel was a separate *Huzúrí Mahall;* and that were it otherwise, to sell the whole for an arrear, only two-thirds of the *Sudder Jama*, was excessive.[1] *Rup Chand Sahu and another* v. *Jivan Lal Ray and others.* 31st Jan. 1832. 5 S. D. A. Rep. 168.—Rattray.

2. At the decennial settlement, *A* contracted for the revenue of a component part of his estate in distinct quotas; but subsequently, in 1808, under a general requisition, issued under the authority of Government, signed a consolidated agreement. Held, nevertheless, that each component part constituted a *Huzúrí Mahall;* and the sale of certain villages was set aside as illegal for the following defects; viz. excess of value of the estate selected (this was before Reg. XI. of 1822); previous inquiry having been omitted; misdescription and omission of details and particulars, of which notice and exhibition are prescribed by Cl. 2. of Sec. 29. of Reg. VII. of 1799, and Sec. 9. of Reg. I. of 1801; and notice of the postponement of the sale not being served, as required by Sec. 5. of Reg. XVIII. of 1814.[2] *Maha Raja Mitr Jit Singh and others* v. *Babu Kalahal Singh and others.* 24th April 1832. 5 S. D. A. Rep. 192.—H. Shakespear.

3. Several *Patidárs, A, B,* and *C,* had distinct interests in villages in Benares, for which *A* contracted as a *Huzúrí Mahall.* Of the total revenue, part was made payable to the *Jágírdár.* When a sale was ordered to levy arrears of 1218 F. S., *B* and *C* paid the arrear demanded, and claimed to be put in possession by the Collector. In 1220 the estate was sold to recover the assigned and unassigned portions of the revenue, though *B* and *C* offered to pay the arrears. At their suit the sale was set aside as to their *Patí,* the revenue of which was distributable under the settlement papers; because, 1st, though *B* and *C* had brought an action to establish their proprietary right, in which they had succeeded, still they had tendered the amount of assigned revenue, and the Collector had not been moved by the *Jágírdár* to sell, and had not inquired if the assigned portion were in arrear; 2dly, the Collector, under Sec. 17. of Reg. VI. of 1795[3], on deposit and tender, should have proceeded in the matter of possession claimed by *B* and *C,* their pending right of action notwithstanding. *Kishn Dayal Singh and others* v. *The Collector of Benares and others.* 2d Aug. 1832. 5 S. D. A. Rep. 223.—Ross & H. Shakespeare.

4. Where a sale of a Benares *Mahall* was found illegal, *A* recovered his distinct *Patí* as a separate *Mahall,* the total *Jama* being apportionable. The Court provided, that, under Sec. 3. of Reg. I. of 1795, and the custom of Benares, *A* was only entitled to profits from the date of a judgment establishing his proprietary right, and one-tenth of the *Sudder Jama* as *Málikáneh* prior thereto. *Ib.*

IBRÁA.—See CRIMINAL LAW, 285 *et seq.* 403.

IDENTITY.—See CRIMINAL LAW, 225, 226. 237.

IDIOT.—See SALE, 4.

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[1] But this was before Reg. XI of 1822, which provides for the sale of an estate if any part of the rent be in arrear.

[2] Sec. 29. of Reg. VII of 1799, and Reg. XVIII. of 1814, were rescinded by Sec 2 of Reg. XI. of 1822, which last Reg has been since rescinded, excepting Sec. 36. and 38. by Sec 1. of Act XII. of 1811, and excepting, also, so far as such Regulation rescinds other Regulations, or parts of Regulations

[3] Cl. 5. of Sec 17. of Reg. VI of 1795 is rescinded by Reg VII. of 1830

IKRÁR NÁMEH. — See CONTRACT, 14; DEED, 7; EVIDENCE, 119, 124; GIFT, 24; HUSBAND AND WIFE, 70.

IJÁB-I-KABÚL.—See GIFT, 71.

IKHTIYÁR NÁMEH. — See DEED, 2.

IKRÁH.—See CRIMINAL LAW, 113. 389.

ILLEGITIMATE CHILDREN. —See BASTARD, *passim*; INHERITANCE, 44 *et seq.* 264.

IMPEDIMENTS TO SUCCESSION.—See INHERITANCE, 237 *et seq.* 313 *et seq.*

IMPOSTURE. — See CRIMINAL LAW, 252.

INAÁMDÁR.

1. According to Sec. 20. of Reg. XVI. of 1827, an *Inaámdár* is not competent to alienate any part of his *Inaám*. *Pandoorung Padya* v. *Narroo Padya*. 8th Feb. 1839. Sel. Rep. 186.—Pyne, Greenhill & Le Geyt.

INDEPENDENT TALOOK. — See LAND TENURES, 33 *et seq.*

INDICTMENT. — See CRIMINAL LAW, 15 *et seq.* 291 *et seq.*

INDORSEMENT.—See BILLS AND NOTES, *passim*.

INFANT.

I. HINDÚ LAW.
1. *Majority*, 1.
2. *Powers of Infants*, 3.
3. *Ancestral Estate of Infants.* —*See* ANCESTRAL ESTATE, 19 *et seq.* 32.
II. MUHAMMADAN LAW, 3 *a*.
III. JAIN LAW, 3 *b*.
IV. IN THE SUPREME COURTS, 4.
V. IN THE COURTS OF THE HONOURABLE COMPANY, 12.
1. *Generally*, 12.
2. *Infancy, effect of in Criminal Cases.*—*See* CRIMINAL LAW, 217, 217 *a*. 244, 245. 503. 632 *et seq.*

I. HINDÚ LAW.

1. *Majority.*

1. Held, that, according to the Hindú law, majority begins with the seventeeth year.[1] *Lachman Das* v. *Rup Chand.* 26th April 1831. 5 S. D. A. Rep. 114.—Sealy.

2. A Hindú father may, by will, postpone his son's majority beyond the age of sixteen years. *Rance Hurrosoondery* v. *Cowar Kistonauth Roy.* 7th Feb. 1841. 1 Fulton, 393.

2. *Powers of Infants.*

3. An infant cannot execute a lease, nor enter into any other engagement.[2] *Kallupnath Singh* v. *Kumlaput Jah and others.* 12th May 1829. 4 S. D. A. Rep. 339.—Sealy.

[1] The sixteenth year limits the term of Hindú minority, according to several parallel texts; but opinions vary, as to whether the limit be the first or the last day. According to Bengal writers, the adult age begins with the first day. 1 Macn. Princ. H. L. 103. 107. 2 Do. 220. 288. 2 Str. H. L. 76, 77. 80. 1 Coleb. Dig. 292, 293. 2 Do. 115. By Sec. 2. of Reg. XXVI. of 1793 minority, in the case of Hindús and Muhammadans, extends to the expiration of their eighteenth year.

[2] 2 Str. H. L. 80. 2 Macn. Princ. H. L. 305.

II. Muhammadan Law.

3 *a*. Held, on the opinion of the *Kazí ul Kozát*, that when a Musulmán girl approaches the age of puberty, and publicly declares herself to be adult, and her outward appearance indicates nothing to the contrary, her declaration must be credited, for she then becomes subject to all the laws affecting adults.[1] *Shums-oon-Nissa Begum* v. *Ashraf-oon-Nissa and others*. 21st May 1840. 2 Sev. Cases, 299.—Reid.

III. Jain Law.

3 *b*. According to the Jain law, majority begins with the age of sixteen years completed.[2] *Maharaja Govindnath Ray* v. *Gulal Chand and others*. 23d March 1833. 5 S. D. A. Rep. 276.—H. Shakespear & Walpole.

IV. In the Supreme Courts.

4. A replication to a plea of infancy, by a Hindú defendant, that certain monies were paid for rent due by the defendant, as *Zamíndár*, in respect of lands necessarily holden by him, and fit and proper for his rank, was held bad on demurrer. *O'Donnell* v. *Maharajah Buddinauth*. 10th July 1790. Mor. 84.

5. Where a decree for an account was made of a joint estate, divisible in certain proportions amongst four brothers, two of whom were minors when the bill was filed on their behalf, and the trustees were directed to divide the estate, and give it to the four brothers when the two minors came of age, if they did not agree; the Court refused a motion *per saltum*, by one of the minors when he came of age, to pay over to him his proportion (although, by the schedule annexed to the answer, there appeared to be ample funds to answer such payment, by calculating the amount of the several debts and credits, and cash and securities), leaving the plaintiff to the ordinary course of proceeding under the decree to account.[3] *Woomischunder Paul Chowdry and another* v. *Isserchunder Paul Chowdry and others*. 21st Nov. 1816. East's Notes. Case 57.

6. A plea of a former decree was overruled where the plaintiff (the defendant, and an infant) had not a day given to him to shew cause, after he came of age, against the decree, which, though nominally made against his mother (who only claimed title for her son), dispossessed the infant of his inheritance. *Gourbullub* v. *Juggernauth Persaud Mitter and others*. 2d Term 1820. East's Notes. Case 116.

7. A father was declared to be disallowed from filing a bill in behalf of himself and his infant children, without first presenting a petition to be appointed next friend to the infant. Macnaghten, J., condemned the practice, and declared that he would not sanction it.[4] *Noor Rohoman* v. *Shaik Ahmed Ahmed*. 3d Term 1823. Cl. R. 1829. 268.

8. Infant heirs of trustees of real estates in Calcutta have been directed to join in conveyances by the Court of Chancery in England. *Jebb* v. *Lefevre*. Cl. Ad. R. 1829. 56.

9. The next friend of infant complainants is liable in the first instance for costs, as between him and the defendants, even where he is an officer of the Court. But where the suit has been *bonâ fide* instituted, he has ultimately a right to be compensated out of the infant's property. *Stephen*

[1] 3 Hed. 483. 2 Macn. Princ. M. L. 267.

[2] For some authorities, taken from the Jain Shastra, see the case referred to.

[3] Fergusson remarked in this case, that till the fourth son came of age all was in the discretion of the trustees, though the Court might controul any abuse of such discretion by their decree, if called for.

[4] By the present equity rules, no bill can be filed for an infant, except by leave of the Court, or a Judge in Chambers, on affidavit stating why it is for the infant's benefit. This rule is peculiar to the Supreme Court. 2 Sm. & Ry. 130.

v. *Hume*. 15th Sept. 1835. Mor. 281.

10. Money belonging to infant defendants may be paid out of Court upon petition only, and without a bill being filed for the purpose. *Rajah Rajnarain Roy* v. *Ranee Nilcomul Dossee*. 30th Oct. 1837. Mor. 286.

11. The defendant pleaded to an action on a bill of exchange that he was under the age of sixteen years, to which the plaintiff replied ratification after full age, and upon this issue was joined and found for the plaintiff. *Cossinauth Bhose* v. *Gooroopersaud Ghose*. Nov. 1839. Mor. 84, note.

V. In the Courts of the Honourable Company.

1. *Generally.*

12. The estate of a minor is responsible for all just debts incurred on his account by his guardian. *Anon*. Case 1 of 1812. 1 Mad. Dec. 51.—Scott & Greenway.

13. The natural mother of an adopted son, a minor, may, as next friend, sue to establish his right, notwithstanding that her maternity has become legally extinguished by the act of adoption. *Mt. Dullabh De* v. *Manu Bibi*. 27th July 1830. 5 S. D. A. Rep. 50.—Ross & Turnbull. (Rattray dissent.)

14. The age of twenty-one years was held as the period of a Christian attaining his majority, with reference to the provisions of a will, under which he claimed the personal management of property bequeathed to him. *Brown, Petitioner*. 14th April 1842. S. D. A. Sum. Cases, 27.—Tucker & Reid.

INFANTICIDE.—See Criminal Law, 302.

INFORMATION, CRIMINAL.—See Criminal Law, 34 *et seq.*

INHABITANCY.—See Jurisdiction, 54 *et seq.*

INHERITANCE.

I. Hindu Law.[1]
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[1] It may be observed that the distinction between realty and personalty prevailing in the English law does not in general exist in the Hindú code, both species of property being, amongst the Hindús, descendible to the legal heirs: their law of inheritance, including what, with us, forms the law of administration, embraces in this respect a wider field, comprehending every possible claimant on the property of a person deceased, as well as every description of property, of which, during his life, he was seised or possessed.—1 Str. H. L. 126. For the general formulæ of succession, see Macn. Cons. H. L. 233., and at the end of the Appendix Dáya Bh. note at the end of c. xi. s. vi., and in 2 Str H L 252. Dáya Cr San. 30. This last is not universally acquiesced in.

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1. Hindú Law.

1. *Of Sons and Grandsons.*

1. Sons share equally in the landed estate of their deceased father: the eldest has no claim to a greater portion than the rest on the ground of primogeniture.[1] *Gudhadur Serma* v. *Ajodhearam Chowdry.* 30th Oct. 1794. 1 S. D. A. Rep. 6.—Sir J. Shore, Speke, & Cowper. *Bhyroochund Rai* v. *Russoomunee.* 18th Sept. 1799. 1 S. D. A. Rep. 27.—Speke & Cowper. *Sheo Bukh Sing* v. *The heirs of Futteh Sing.* 18th Aug. 1818. 2 S. D. A. Rep. 265.—Oswald. *Taliwur Sing* v. *Puhlwan Sing.* 2d Feb. 1824. 3 S. D. A. Rep. 301.—C. Smith.

2. And the same point was held in *Isserchunder Corformah* v. *Govindchund Corformah.* Jan. 1823. Macn. Cons. H. L. 74.

3. Sons by different mothers inherit equally. Distribution is made among them *per capita* and not *per stirpes*, not according to the mothers, but with reference to the number of sons.[2] *Sumrun Singh and others* v. *Khedun Singh and another.* 27th June 1814. 2 S. D. A. Rep. 116.—Harington & Fombelle.

4. Two brothers living undivided, and dying, the one leaving a widow, and the other a widow and a son, the son succeeds to the whole estate as heir to his father and uncle, and the widow of his uncle has no claim upon the property but for her maintenance.[3] *Mt. Goolab* v. *Mt. Phool.* 9th Sept. 1816. 1 Borr. 154.—Nepean, Brown, & Elphinston.

5. Where a Hindú claimed to obtain from his step-mother a half of his late father's estate, leaving the other half to her son, his younger brother, it was held that the sons were each entitled to one moiety, after deduction of one-twelfth share of the whole for their sister's dower,[4]

[1] Menu, B. ix. v. 214, 215. Mit. c. i. s. iii. 4. 7. Steele, 68. 229. 1 Macn. Princ. H. L. 17. 2 Do. 1. 3. 6. 1 Str. H. L. 198. Dáya Cr, San. c. vii. 13. The allotment of a superior portion to the elder brother in token of reverence is obsolete, unless by the free consent of the younger brothers. Dáya Bh. c. iii. s. ii. 26, 27. 1 Str. H. L. 133. 193. 2 Coleb. Dig. 551. But if such be the custom of the country or family, an eldest son will succeed to the entire estate. 2 Macn. Princ. H. L. 17. See *infra*, Inheritance, Pl. 199 *et seq.* It may be remarked, that, according to the law of Bengal, where a man acquires property with the assistance of one or more of his sons, with the use of the patrimony, those members of the family who contributed to the acquisition are entitled to two shares, and the idle members to one only; but the distinction does not obtain in other schools, the doctrine in general being, that all the brethren share alike, whenever the patrimony has been expended in making the acquisition, without reference to the degree of personal labour supplied by each. 2 Macn. Princ. H. L. 7, note.

[2] Menu, B. ix. v. 156. 2 Coleb. Dig. 576. Macn. Cons. H. L. 5.

[3] But the widow of the uncle would have been entitled to share had the property been divided, and in any case by the law as current in Bengal. See *infra* p. 313, note 4. and p. 318, note 2.

[4] 3 Coleb. Dig. 96. 491.

and a suitable sum for the brother's marriage. *Larvo* v. *Manickchund Shamjee*. 3d July 1818. 1 Borr. 418.—Elphinston, Keate, & Sutherland.

6. Two sons of a Hindú deceased, by his second wife (who survived him), were held to be entitled to share equally with the sons of a former wife in their father's property, the widow to be maintained by all the sons. *Mt. Muncha and others* v. *Brijbookun and another*. 27th May 1824. Sel. Rep. 1.—Romer, Sutherland, & Ironside.

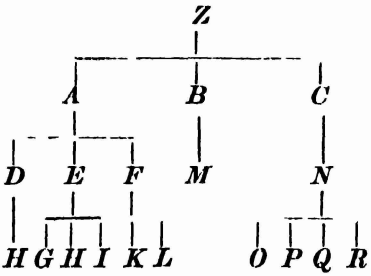
7. The heirs of a deceased Hindú in Shahabad being an adopted son, and a real son born after the adoption, it was held that the adopted son takes one-fourth, and the real son three-fourths, of his property.[1] *Preag Sing* v. *Ajoodya Sing*. 7th Dec. 1825. 4 S. D. A. Rep. 96.

8. A Hindú, at his death, leaves two widows, a son by one of them, and the son of a paternal uncle. The son succeeds to his entire estate. *Bhyrobee Dossee* v. *Nubhissen Bhose*. 23d Feb. 1836. 6 S. D. A. Rep. 53. —Halhed.

9. Upon the death of a Hindú intestate, in whom the legal estate in premises is vested, such legal estate descends upon his sons, to the exclusion of his daughters. *Doe dem. Degumber Dutt and others* v. *Cossinauth Shaw*. 13th April 1844. 1 Fulton, 452.

10. An hereditary *Zamíndárí*, managed many years by some one heir of the original *Zamíndár* for the benefit of the rest, they receiving portions of the profits, was adjudged to be thus divisible at the suit of one of the heirs for a division; viz. three sons, of eight left by the *Zamíndár*, died without issue, but of these three, one left a widow surviving, and one of the other five was adopted into another family, and thereby excluded from the paternal inheritance.[2] The *Zamíndárí*, therefore, was divided into five parts, of which four fell to the heirs of four of the sons who left issue, and one to the widow of the son who left her his heir.[3] *Srinath Serma* v. *Radhakaunt*. 24th Nov. 1796. 1 S. D. A. Rep. 15.—Speke & Cowper.

11. A *Zamíndár* having five sons was survived by three, *A*, *B*, and *C*, who are each entitled to take one-third of the estate.



A had three sons who took each one-third of one-third, or one-ninth. That of *D* goes to his adopted son *H*, son of his brother *E*. The share of *E* goes to his first and third sons *G* and *I* (the second, *H*, having been adopted by *D*), who each get half of one-ninth, or one-eighteenth. The two sons of *F* take his share, half of one-ninth, or one-eighteenth. The son of *B* takes his share, one-third. That of *C* fell, on his death, to his son, and

[1] Datt. Mim. s. v. 40. x. 1. Datt. Chan. s. v. 16. and note, 17. 19. Suth. Synop. 220 and note xxii. 228. Mit. c. i. s. xi. 24. 26. 1 Str. H. L. 99, note. Steele, 54. 2 Macn. Princ. H. L. 184. Dáya Cr. San. c. vii. 23. *et seq.* Colebrooke says, on the authority of *Cátyáyana*, that the adopted son is in this case entitled to one third. 3 Coleb. Dig. 154. 179., and it is also so stated by *Devanda Bhatta* and *Jímúta Váhana*. Datt. Chan. s. v. Dáya Bh. c. x. 9. But this is according to the Bengal School. 2 Macn. Princ. H. L 185, note. Macn. Cons. H. L. 150. 232, 233. As to the different shares taken by real and adopted sons under this circumstance by the custom of various Casts, see Steele, 188. and App. A. 30.

[2] Menu, B. ix. v. 142. Mit. c. i. s. xi. 32. Macn. Cons. H. L. 128. This must have been a *Dattaka* adoption, otherwise there would have been no exclusion.

[3] 1 Str. H. L. 121. 124. 2 Do. 250. Dáya Bh. c. xi. s. i. 7. 14. 46, and notes. 3 Coleb. Dig. 478. Macn. Cons. H. L. 5, 6. 9.

on his death to his four grandsons, who took one-fourth of one-third, or one twelfth each.[1] *Duttnaraen Sing* v. *Ajeet Sing and others.* 14th Feb. 1799. 1 S. D. A. Rep. 20.—Cowper.

12. The proprietor of a *Talook* in Benares died, leaving three sons. The first son died leaving a son, the plaintiff; afterwards the second son died without leaving male issue. Plaintiff, the grandson, sues the defendant, the third son, for a partition and his share; and there were surviving, besides the parties, two widows of the second son. It was held that the plaintiff and defendant take half and half by inheritance,[2] and that the widows receive maintenance.[3] *Duljeet Sing* v. *Sheomunook Sing.* 7th Sept. 1802. 1 S. D. A. Rep. 59.—H. Colebrooke & Harington.

13. A Hindú dies leaving four sons: the widows of the first and second sons claim the estate; the fourth had lost his title to inheritance by having been adopted into another family: the estate was therefore divided into three parts, and one part adjudged to each of the claimants: the third part, the share of the third son, who survived the husbands of the claimants, devolved upon his legal heirs. *Ranee Bhuwani Dibeh and another* v. *Ranee Sooruj Munee.* 12th May 1806. 1 S. D. A. Rep. 135.—Harington & Fombelle.

14. Sons of an undivided brother inherit his separate self-acquired property to the exclusion of their uncles and their descendants. *Joynarain Mullick* v. *Bissumber Mullick.* Aug. 1819. Macn. Cons. H. L. 48.

15. Grandsons inherit *per stirpes,* and not *per capita. Ib.*

16. Grandsons (sons of a daughter) were decided under a *Vyavashta* not to succeed to the property of their maternal grandfather during the life of a daughter-in-law (widow of a son), he leaving no other heirs.[4] *Muha Luhmee* v. *The grandsons of Kripashookul.* 19th July 1817. 2 Borr. 510.—Prendergast & Sutherland.

17. Maternal grandsons by different mothers take *per capita* and not *per stirpes.*[5] *Ramdhun Sein* v. *Kishenhanth Sein.* 17th July 1821. 3 S. D. A. Rep. 100.—Goad.

18. A Hindú dying possessed of real property, and leaving a son and a grandson, an equal right descends to each, and not to the son alone.[6] *Duyashunkur Kasseeram* v. *Brijvullubh Moteechund.* 13th Aug. 1830 Sel. Rep. 41.

19. The grandsons of the original acquirer of certain property instituted an action, during the life of the latter, against their paternal uncle, for their shares of the estate acquired by their common ancestor. Held, that they were entitled to their shares, on proof that the original acquirer had relinquished his title to the property in favour of his sons, and that therefore no legal objection existed to the divi-

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[1] The principle on which this distribution of shares was adjusted will be found in the Mitácshará concerning the case of brothers leaving an unequal number of sons. Mit. c. i. s. v. 1. 2. 2 Macn. Princ. H. L. 10. Macn. Cons. H. L. 5. Dáya Cr. San. c. i. s. i. 3.

[2] 1 Macn. Princ. H. L 18. Dáya Bh. c. iii. s. i. 18. 20, 21. Mit. c. i. s. v. 1, 2. 3 Coleb. Dig. 6, 7. Macn. Cons. H. L. 5.

[3] It afterwards appeared that the parties in this case had withheld from the knowledge of the Court a decree of the Provincial Court (passed during the appeal to the Sudder Dewanny Adawlut) adjudging to the widows a third of the *Talook* in dispute under a deed executed by their husband, and written acknowledgments by the co-heirs. It was therefore ordered by the Court that the parties should each get half of the remaining two-thirds.

[4] But this doctrine is not generally received, and may be considered as overruled by a note by Sir W. Macnaghten, in which he says, that it is not usual for widows of sons, dying in their father's lifetime, to inherit. 2 Macn. Princ. H. L. 107. And see 1 Str. H. L. 15. 233. 235.

[5] 1 Macn. Princ. H. L. 18. Macn. Cons. H. L. 4.

[6] Dáya Bh. c. ii. 9. Mit. c. i. s. i. 21. s. v. 9. 11. 2 Macn. Princ H. L. 8. Macn. Cons. H. L. 5.

sion of the estate between the sons or their representatives. *Byram Sing and another* v. *Seebsehai Sing and others.* 5th April 1836. 6 S. D. A. Rep. 65.—Rattray.

20. The heirs of a Hindú being a son's son, two daughters of another son, and the widow of a third son, the grandson takes one-third, the two granddaughters one-third, and the widow one-third. *Rai Sham Bullubh* v. *Prankishen Ghose.* 4th July 1820. 3 S. D. A. Rep. 33.—Goad.

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2. *Of Adopted Sons.*

21. A son adopted according to the *Kritrima* form takes the inheritance exclusively, property real and personal, hereditary and acquired. *Kullean Sing* v. *Kirpa Sing and another.* 23d April 1795. 1 S. D. A. Rep. 9. —Sir J. Shore & Council.

22. An adopted son (*Dattaka*), taking the estate of his adoptive father, is excluded from inheritance in his own family.[1] *Srinath Serma* v. *Radhakaunt.* 24th Nov. 1796. 1 S. D. A. Rep. 15.—Speke & Cowper. *Duttnaraen Sing* v. *Ajeet Sing and others.* 14th Feb. 1799. 1 S. D. A. Rep. 20.—Cowper. *Ranee Bhuwani Dibeh* v. *Ranee Sooruj Munee.* 12th May 1806. 1 S. D. A. Rep. 135.—Harington & Fombelle.

23. And the same point was decided in *Gopeymohun Deb* v. *Rajah Raykissen. Circa* 1800. Cited in East's Notes, Case 75. Macn. Cons. H. L. 230.

24. According to the law as current in Behar, a boy adopted by the *Kritrima* form takes the inheritance both in his own family and in that of his adoptive parents.[2] *Mt. Deepoo* v. *Gowreeshunhur.* 23d Feb. 1824. 3 S. D. A. Rep. 307.—Harington & Ahmuty.

25. An adopted son succeeds collaterally as well as lineally in the family of his adoptive father. *Shamchunder and another* v. *Narayni Dibeh and another.*[3] 21st Aug. 1807. 1 S. D. A. Rep. 209.—H. Colebrooke & Fombelle. *Gourhurree Kubraj* v. *Mt. Rutnasuree Dibia.* 30th April 1820. 6 S. D. A. Rep. 203.—Goad & Dorin.

26. And therefore the succession to one of two adopted sons is vested in the other as being the nearest collateral. *Ib.*

27. After an adoption of a son the adoptive father cannot disinherit such son by will. An adopted son may be considered in the nature of a purchaser for a valuable consideration, as he thereby lost his inheritance in his own natural family out of which he was adopted.[4] *Gopeymohun Deb* v. *Rajah Raykissen. Circa* 1800. Cited in East's Notes, Case 75.

28. A remote heir of a deceased Hindú will be excluded by the adoption of a person by the widow of the deceased under his authority. *Veerapermal Pillay* v. *Narrain Pillay.* 5th Aug. 1801. 1 Str. 91.

29. A claim of the widow of a *Zamíndár* (continued on her decease by her husband's kindred) to recover possession of part of her late husband's estate, was dismissed on proof that the defendant was entitled to it, not under a deed of gift by the widow, as adjudged by the Zillah and Provincial Courts, since the widow could not alienate the estate left by her husband; but on proof that the defendant was the legal heir of the husband, as having been adopted after the husband's death by the widow,

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[1] Mit. c. i. s. xi. 32. Steele, 53. 2 Macn. Princ. H. L. 183. Macn. Cons. H. L. 128.

[2] 1 Macn. Princ. H. L. 76. 3 Coleb. Dig 276, note. Ib. 282. Suth. Synop. 219, and notes xv. xviii, xix. 226, 227.

[3] This decision was confirmed on appeal to the Privy Council, on the 6th Feb. 1835. 3 Knapp 55. Vide Menu, B. ix. v. 158, 159. Dáya Bh. c. x. 7, 8. Mit. c. i. s. xi. 30, 31. 1 Macn. Princ. H. L. 78. Macn. Cons. H. L. 128. *et seq.* 159. Suth. Synop. head 4, and note xx. 227. 3 Coleb. Dig 177. 1 Str. H. L. 97. 2 Do. 116.

[4] 2 Macn. Princ. H. L. 183. Macn. Cons. H. L. 153. 228, 229.

under a written authority to her for that purpose. *Nundkomar Rai and another* v. *Rajindunaren.* 2d Dec. 1808. 1 S. D. A. Rep. 261. — Harington & Fombelle.

30. Semble, Immediately on the adoption of a son by a widow under the authority of her late husband, the estate which she has inherited from him, in default of male issue, becomes the property of the adopted son[1]; and this notwithstanding that, in the *Niyam-patra,* or declaratory deed executed by the widow, and reciting that she had so adopted a son with due authority, she had declared that the estate was to remain with her during her life, and to go to the son adopted at her demise. *Mt. Solukhna* v. *Ramdolal Pande.* 27th May 1811. 1 S. D. A. Rep. 324.—Harington.

31. Semble, According to the law as current in Mithila, the adopted son of a widow succeeds to her peculiar property, but not to that of her husband.[2] *Sreenarain Rai and another* v. *Bhya Jha.* 27th July 1812. 2 S. D. A. Rep. 23. — Harington & Stuart.

32. And Semble, *vice versâ,* the son adopted by the husband is heir to his estate, but does not succeed to the wife's peculiar property. *Ib.*

33. But Semble, If the husband and wife jointly appoint an adopted son, he stands in the relation of son to both, and succeeds as heir to the estate of both. *Ib.*

34. A childless Hindú, having two wives, gives permission to each of them to adopt a son. After having himself adopted a son on behalf of his senior wife, he confirms the permission originally granted to his second wife. Held, that the son adopted by her, in consequence of such permission, after her husband's death takes the inheritance jointly with the son adopted by the husband on behalf of his senior wife.[3] *Goureepershaud Rai* v. *Mt. Jymala.* 12th Dec. 1814. 2 S. D. A. Rep. 136.—Harington.

35. Semble, The reverse would have been the case had the husband not confirmed the permission to the second wife subsequently to the first adoption. *Ib.*

36. Where a man adopted a son, and executed a deed declaring him to be his heir, and then adopted another son in conjunction with a second wife, whom he married subsequently to the first adoption, it was held that the deed did not affect the rights of the second adopted son. *Rungamah* v. *Atchummah and others.*[4] Case 11 of 1827. 1 Mad. Dec. 521.

37. Semble, That a *Kritrima* son will inherit the property of his adoptive father, even although the latter leave a widow. *Mt. Sutputtee* v. *Indranund Jha.* 2d April 1816. 2 S. D. A. Rep. 173.—Harington.

38. A son, adopted with the permission of her husband by a woman on whom her father's estate had devolved, will not be entitled to such estate on his adoptive mother's death, but such estate will go to her father's brother's son in default of nearer heirs. *Gunga Mya* v. *Kishen Kishore Chowdhry.* 17th Dec. 1821. 3 S. D. A. Rep. 128.—Goad & Dorin.

39. If a widow, having been directed by her husband to do so, shall adopt a son during the lifetime of her husband's father, or after his death, he (her husband's father) having sur-

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[1] In the same manner as property coming into the hands of a pregnant widow by the same means cannot be used by her as her own after the birth of a son. 1 Str. H L 101 2 Do 127.

[2] This case was determined on a deed of compromise, but it appears, by the opinions of the Pandits, that according to the law as current in Mithila, a person being adopted by the wife does not, by such adoption, become the adopted son of the husband, even though the adoption should have been permitted by the husband, and that consequently such person is only entitled to his adoptive mother's *Stridhana*

[3] Macn. Cons. H L. 181. 183.

[4] The decision in this case is now in appeal before the Judicial Committee of the Privy Council.

vived her husband, and having then died, not leaving either child or widow surviving; the son, so adopted, shall succeed, not only to the estate of her husband, but to the estate of her husband's father also. *Gowrbullub* v. *Juggernothpersaud Mitter and others.* 4th Term 1823. Macn. Cons. H. L. 158.

40. Where *B* claimed as the adopted son of the widow of *A*'s adopted son for an *Inaám* village descending from *A*'s late husband; *A*, not having interfered with *B*'s adoption, was considered a consenting party, and *B* was declared heir to his adoptive grandfather, and one-half of the village was decreed to him, and the other moiety to *A* for her life, as the late proprietor died without male issue: but even of this half the management of the real property, as regarded gift, mortgage, or sale, was held to belong to, and to be conducted with the consent of, *B*, who, after *A*'s death, was to inherit the whole. *Ramajee Huree Bhide* v. *Thukoo Baee Bhide.* 15th Jan. 1824. 2 Borr. 443.—Sutherland & Ironside.

41. In the case of a Hindú of Bengal, dying in his father's lifetime without issue, but leaving his widow authorised to adopt a son; if such adoption be made by the widow with the knowledge and consent of her deceased husband's father, at any time before he shall have made any other legal disposition of the property, or a son shall have been born to his daughter in wedlock, no such subsequent disposition or birth shall invalidate the claim of the son so adopted to the inheritance. *Ramkishen Surkheyl* v. *Mt. Sri Mutee Dibia and others.* 19th June 1824. 3 S. D. A. Rep. 367.—C. Smith & Martin.

42. Held, that an adopted son in Shahabad takes one-fourth of his adoptive father's estate, should the latter, after the adoption, have a son born to him.[1] *Preag Sing* v. *Ajoodya Sing.* 7th Dec. 1825. 4 S. D. A. Rep. 96.

[1] See *ante*, p. 306, note 1.

3. *Of Illegitimates.*[2]

44. A son not born in lawful wedlock may inherit if such be the custom of the province, but not otherwise.[3] In this case, it appearing that, by the custom of the Nagur Brahmans in Benares, illegitimate sons cannot inherit, judgment was passed against the claimant, the illegitimate son of a Nagur Brahman suing for his father's estate.[4] *Mohun Sing* v. *Chumun Rai.* 20th Nov. 1799. 1 S. D. A. Rep. 28.—Speke & Cowper.

45. Among Súdras, illegitimate children inherit to their putative fathers.[5] *Vencataram* v. *Vencata Lutchemee Uflam and another.* 23d Feb. 1815. 2 Str. 304.

46. But illegitimate sons of Rajputs, or any of the three superior tribes, by a woman of the Súdra or other inferior class, are not entitled to inherit.[6] *Pershad Singh* v. *Ranee*

[2] In the present age (the *Kali Yuga*) equality of tribe is, in the strictest sense, essential to a legal marriage, though not to the legitimacy of the issue, inasmuch as, should a marriage so prohibited take place, the issue would notwithstanding be legitimate. But the converse does not hold; the offspring of a woman of a superior tribe, by a man of an inferior one, being excluded from the definition of legitimacy, and consequently debarred from inheriting. Mit. c. i. s. xi. 2, and note. 1 Str. H. L. 40.

[3] Steele, 181.

[4] The claimant was considered to be of that class of illegitimate offspring which is denominated *Paunerbhava.* Mit. c. i. s. xi. 8. 2 Str. H. L. 208. And by the ancient law such offspring were entitled to the inheritance on failure of legitimate or other preferable issue, or to an inferior portion if there were a legitimate son. Mit. c. i. s. xi. 22. 24. But that part of the law is in general considered obsolete, and among the Nagur Brahmans in particular, as was ascertained by evidence to their national usage.—Coleb.

[5] Menu, B. ix. v. 179. Mit. c. i. s. xii. 3 Coleb. Dig, 143. 283. Dáya Bh. c. ix. 29. 1 Str. H. L. 132. 2 Macn. Princ. H. L. 15, note.

[6] Menu, B. ix. v. 178. Dáya Bh. c. ix. 28. 3 Coleb. Dig. 284. It appears that the

Muheshree. 17th Dec. 1821. 3 S. D. A. Rep. 132.—Goad & Dorin.

47. And the same point was decided in *Cawareeboyee* v. *Sree Ram Doss.* Case 5 of 1826. 1 Mad. Dec. 546.—Grant, Cochrane, & Oliver.

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4. *Of Widows.*[1]

(*a*) *Generally.*

48. A widow succeeding to the landed estate of her husband takes only a life interest.[2] *Mahodu* v. *Kuleuni.* 14th March 1803. 1 S. D. A. Rep. 62.—H. Colebrooke & Harington. *Radha Munee Dibeh* v. *Shamchunder and another.* 27th Sept. 1804. 1 Do. 85.—H. Colebrooke & Harington. *Mt. Bijya Dibeh* v. *Mt. Unpoorna Dibeh.* 26th Sept. 1806. 1 Do. 162.—H. Colebrooke & Harington. *Nundkomar Rai and another* v. *Rajindernarain.* 2d Dec. 1808. 1 Do. 261.—Harington & Fombelle. *Mt. Bhuwani Dibeh* v. *Mt. Soluhhna.* 16th April 1811. 1 Do. 322. — Harington. *Hemchund Mujmoodar* v. *Tara Munee.* 18th Dec. 1811. 1 Do. 359.—Harington & Stuart. *Kaleepershaud Roy* v. *Degumber Roy.* 28th May 1817. 2 Do. 237.—Ker & Oswald. *Pokhnarain* v. *Mt. Seesphool.* 5th Nov. 1821. 3 Do. 114.—Goad & J. Shakespear. *Mt. Lalchee Koonwur* v. *Sheopershad Sing and others.* 5th April 1841. 7 S. D. A. Rep. 22.—Lee Warner & D. C. Smyth. *Mt. Joraon Koonwur* v. *Chowdree Doosht Dowun Singh and others.* 19th April 1841. 7 S. D. A. Rep. 26.—D. C. Smyth.

49. The same point was decided in *Doe dem. Kisnogovind Sein and another* v. *Gungunarain Sircar.* 9th Nov. 1816. *Doe dem. Ramanund Mukhopodia* v. *Ramkissen Dutt.* 25th June 1817. Macn. Cons. H. L. 18, 19.

50. A Hindú widow has a life interest only in her late husband's landed property, which property will be sequestered to the use of Government in the event of there not being at the time of her death any surviving heir of her husband from the daughter down to the spiritual preceptor.[3] *Pokhnarain* v. *Mt. Seesphool.* 5th Nov. 1821. 3 S. D. A. Rep. 114.—Goad & J. Shakespear.

51. Semble, A widow is not entitled to take more than a life estate in the moveable property of her late husband.[4] *Dialchund Adie* v. *Ki-*

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claimant would have been entitled to inherit, on the ground of usage, if he could have proved his allegation that both his father and grandfather, who inherited the estate, were, like himself, sons of a Rajput by a woman of the Dhanuk trike. But at any rate they would be entitled to maintenance. Mit. c. i. s. xii.

[1] For the power of alienation of property inherited by Hindú widows, see HINDU WIDOW, 11 *a. et seq.*

[2] Dáya Cr. San. c. i. s. ii. 3. 2 Str. H. L. 251. 407, 408. 410. Dáya Bh. c. xi. s. i. 9. 56, 57. 60. Macn. Cons. H. L. 9. 32. 34. 39. 42. 45. 73. 93. 3 Coleb. Dig. 467. Steele, 69. 231. App. A. 54. The widow has not an absolute proprietary right, neither can she in strictness be called even a tenant for life, for the law provides her successors, and restricts her use of the property to very narrow limits: she cannot dispose of the smallest part, except for necessary purposes and certain other objects particularly specified. It follows, then, that she can be considered in no other light than as a holder in trust for certain uses. 1 Macn. Princ. H. L. 19.

[3] The king is regarded as the *ultimus hæres*, except, however, the property be that of a Brahman. Menu, B. ix. v. 189. Dáya Bh. c. xi. s. vi. 34. Mit. c. ii. s. i. 27. s. vii. 5, 6. 1 Str. H. L. 149. 2 Do. 247. 3 Coleb. Dig. 538. Macn. Cons. H. L. 2.

[4] There is some difference of opinion amongst the Hindú lawyers as to the extent of a widow's power over moveable property. According to the Chintámaní and Retnácara, it seems she takes an absolute interest in the moveable estate; but by the law as current in Bengal there is no distinction made in this respect between moveable and immoveable property devolving on a widow. Dáya Bh. c. xi. s. i. Macn. Cons. H. L. 93. According to the Mitácshará, moveable property, acquired by inheritance by a widow, is her private property.—c. ii. s. xi. 2, and note. Steele, 69, note. App. A. 54. In this case the widow claimed under a will, and the correctness of the decision, giving her a life interest only in the estate, may well be questioned. If the distinction which

shoree Dossee. 1799.[1] Macn. Cons. H. L. 20. Mor. 83.

52. In Tirhoot, a widow succeeding to her husband's estate has power to consume, or give, or sell, in her lifetime, the moveables, but has no power over the immoveables beyond a moderate and frugal enjoyment of them.[2] *Sreenarain Rai* v. *Bhya Jha.* 27th July 1812. 2 S. D. A. Rep. 23. Cited in East's Notes. Case 124. —Harington & Stuart.

53. The same principle was held to prevail in Bengal, in *Sreemutty Juggomohamey Dossee* v. *Ramhun Gupto.* 23d June 1814. Cited in East's Notes. Case 124. *Jupada Raur* v. *Juggernaut Thakoor.*[3] 7th Feb. 1816. *Ib.*

54. It was held that a widow was entitled to an interest for her life in the whole of her deceased husband's immoveable or real estate, and to an absolute interest in the whole of his moveable or personal estate. *Hurrosoondery Dossee* v. *Cossinauth Bysack.* Dec. 1814. Cl. R. 1834. 92.

55. But the suit came on again, to be heard upon a bill of review, and it was decreed that a widow, dying without issue, is entitled to the real and personal estate of her deceased husband, to be possessed, used, and enjoyed by her, as a widow of a Hindú husband dying without issue in the manner prescribed by the Hindú law. *Cossinauth Bysack and another* v. *Hurroosoondery Dossee and another.*[4] 11th Aug. 1819. Cl. R. 1834. 93. East's Notes. Case 124.

56. From this decision there was an appeal to the King in Council, when the judgment of the Court below was affirmed; and it was held, that where the husband dies intestate, and without issue, the widow is entitled to the absolute possession of the property descended from him, to enjoy it during her lifetime, and to dispose of it under certain restrictions,[5] That the extent and limit of her power of disposing of the property are not definable in the abstract, but must be left to depend upon the circumstances of the disposition when made, and must be consistent with the law regulating such disposition. There is no distinction in this respect between moveable and immoveable property.[6] *Cossinauth Bysack* v. *Hurroosoondery Dossee.* 24th June 1826. Cl. R. 1834. 91. Mor. 85.

57. A childless Hindú widow takes both the real and personal property of her deceased husband, he leaving

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afterwards arose between the interest taken by widows in moveable and immoveable property had then existed, the Court could not but have declared the legatee entitled to an absolute interest in the moveable estate of her husband. By the effect now given to the wills of Hindús, in the Supreme Courts, she would, it seems, be declared entitled to an absolute interest in the whole, both moveable and immoveable. The property of the testator was self-acquired. Macn. Cons. H. L. 35.

[1] Morton says that this case was decided on the 6th of April 1795.

[2] It must be remarked that this case was decided according to the Mithila law. By the law of Mithila, as well as by that of Bengal and Benares, she takes only a life estate in the immoveable property. 2 Macn. Princ. H. L. 33. Colebrooke remarks on a case decided in Zillah Vizagapatam, that there does not appear to be any restriction as to a widow's power as affecting moveables, she succeeding to the separate property of her husband, who died leaving brothers him surviving. 2 Str. H. L. 408.

[3] It must be remarked that these two cases were decided without argument at the bar, the principle being supposed to be fixed.

[4] Sir E. H. East's elaborate and learned judgment in this case will be found reported in Vol. II. of this work, p. 198. A particular account of the earlier proceedings is given by Sir F. Macnaghten. See Macn. Cons. H. L. 7. 78. *et seq.*

[5] For the conditions under which a Hindú widow may alienate the estate inherited by her from her husband, see HINDÚ WIDOW, 11 *a. et seq.*

[6] Dáya Bh. c. iv. s. i. 8, 9. 12. c. xi. s. i. 2—8. 43. Macn. Cons. H. L. 11. 32. 36. 42. It will be seen by the preceding cases there was formerly an opinion that the widow took moveable property absolutely, and immoveable for life only: the above case may be considered as deciding that wherever the Bengal law prevails, there is no such distinction. Macn. Cons. H. L. 93.

no male issue.[1] *Ruvee Bhudr Sheo Bhudr* v. *Roopshunker Shunherjee.* 13th May 1824. 2 Borr. 656.—Romer, Sutherland, & Ironside.

58. A widow, in default of issue, is entitled to succeed to the whole of her deceased husband's estate; but her title to such estate is only as tenant for life, and she has no power to alienate or devise any portion of the estate, which, on her death, devolves on his legal heirs.[2] *Keerut Sing* v. *Koolahúl Sing and others.* 11th Dec. 1839. 2 Moore Ind. App. 331.

59. A Hindú *Zamíndár,* at his death without issue, left two widows, an adopted son of his brother, and sons of his half-brother. The first widow, and then the son adopted by her under due authority, died. The other widow (who stated that she had also adopted a son after the death of the other, under due authority) sued for the estate left by the husband. It was held, that to one moiety, which was the estate of the son by the other widow, she, as step-mother, was not entitled, but that she should recover one moiety in her own right.[3] *Narainee Dibeh* v. *Hirkishor Rai.* 24th Dec. 1801. 1 S. D. A. Rep. 39.—Lumsden & Harington.

60. A Hindú dying, and leaving a widow and a daughter by a former marriage, the widow (the step-mother) inherits the estate, to the exclusion of the step-daughter; but the latter being next in succession, the step-mother cannot sell or alienate the property. *Gunga* v. *Jeevee.* 18th Nov. 1811. 1 Borr. 384.—Crow & Day.

61. The heirs in the male line of a deceased Hindú being the widow of his nephew by the father's side and the great-grandson of his own brother, the Court decreed the property to the widow for her life.[4] *Dhoolubh Bhaee and others* v. *Jeevee Bhaee and another.* 30th June 1813. 1 Borr. 67.—Nepean, Brown, & Elphinston.

62. If a Hindú die without issue, leaving two widows, they take his whole estate for life; and on the death of one, the whole survives to the other[5], upon whose death it goes to the collateral heirs of the husband. *Sree Muttee Berjessory Dossee* v. *Ramconny Dutt and another.* 26th July 1816. East's Notes. Case 54.

63. A second widow succeeds to the inheritance on the death of the first.[6] *Sree Vutsavoy Jagganadha*

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[1] This is according to the Mayuc'ha.

[2] 1 Str. H. L. 248. 2 Do. 404.

[3] *Sed quære de hoc.* A judgment passed by a competent tribunal and *Sanad* granted by Government so far back as the Bengal year 1181, conferring the *Zamindárí* in equal shares on the two widows, governed the Court in its decision. But according to the principles of the Hindú law (leaving out of consideration that prior judgment which must have been passed before the adoption took place or was completed), the succession passed from both of them to the adopted son, and judgment must have been given accordingly, if a claim had been preferred on the part of the adopted son for the property of his adoptive father held by the widows, provided the fact of a legal adoption, under the requisite sanction from the husband, were duly established. Both shares, which the widows held as heirs of their husband under the original judgment and *Sanad* of 1811 devolved then, of right, on the first adopted son, considered as son by adoption of their husband. Upon his death, and subsequent adoption by the second widow (supposing the adoption legal and valid), the property passed to this second adopted son. There can be no doubt that, according to the doctrine that prevails in Bengal, the step-mother would not inherit from her step-son. But it does not appear that the Pandits had sufficient authority for saying that, according to the doctrine of the Dakhin, a step-mother would inherit. If the second adoption were void, the succession would pass, on the death of the first adopted son, to the male issue of his adoptive father's whole brother, in preference to the issue of the half brothers; and the adopted son of the whole brother would take the succession on this ground in like manner as if he were linear issue. (Menu, B. ix. v. 159. Dáya Bh. c. xi. s vi. 2.)—Coleb.

[4] In this case the property in dispute was divided; but had it not been separated, the great grandson would have succeeded, to the exclusion of the widow of the nephew. See *infra,* p. 316, note 3, and p. 318, note 2.

[5] 1 Str. H. L. 56. Mit. c. ii. s i. 5, note. 1 Macn. Princ. H. L. 21. 2 Do. 37. Steele, 69. 232. Dáya Bh c. xi. s. i. 59.

[6] Mit. c. ii. s. i 5, note. 1 Str. H. L 56.

Rauze v. *Sree Vutsavoy Boochee Seetiah.* Case 5 of 1824. 1 Mad. Dec. 453. — Ogilvie, Cochrane, & Oliver.

64. Where a Hindú widow adopted a son, who died first without male issue, it was held that she was entitled to her husband's whole property in preference to her adopted son's childless widow. *Thukoo Baee Bhide* v. *Ruma Baee Bhide.* 13th July 1819. 2 Borr. 446.—Elphinston & Romer.

65. But the daughter-in-law subsequently adopting a son without the interference of her mother-in-law, such adopted son was declared to be heir to his adoptive grandfather's estate, and to be entitled to the possession of one-half of such estate, the mother-in-law enjoying the produce of the other half during her life, but without power of disposal; the management of the real property, as regards gift, sale, or mortgage, resting with the daughter-in-law's adopted son, who, after her death, would inherit her share. *Ramajee Huree Bhide* v. *Thukoo Baee Bhide.* 15th Jan. 1824. 2 Borr. 443.—Romer, Sutherland, and Ironside.

66. If a son die in the lifetime of his father, unmarried, the estate, on the father's death, will go to the father's widows; but should he survive his father, it will on his, the son's, death go first to his mother and then to his paternal grandmother, to the exclusion of any widows of his father, who will only get maintenance. *Sree Mootee Jeomoney Dossee* v. *Attaram Ghose.* 10th Dec. 1823. Macn. Cons. H. L. 64.

67. By the law as current in Bengal. property devolving on a widow at her husband's death cannot be inherited under any circumstances by a widow of her husband's brother. *Mt. Jymunee Dibiah* v. *Ramjoy Chowdree.* 6th Jan. 1824. 3 S. D. A. Rep. 289. — Leycester & Harington.

68. One of two widows (one childless) of a deceased Hindú, succeeding to the estate of her childless son, who had inherited the property from his father, and dying, the estate goes to the heirs of her son, and not to the childless widow of his father, who is only entitled to maintenance. *Bhyrobee Dossee* v. *Nubkissen Bhose.* 23d Feb. 1836. 6 S. D. A. Rep. 53. —Halhed.

69. A Hindú died possessed of an ancestral landed estate, leaving two sons, who, subsequently to their father's death, jointly enjoyed the estate. One of them died leaving a widów, and his share of the property consequently devolved on the surviving brother. On the death of the latter, without children, his widow succeeds him, according to the law as current in Mithila. *Mt. Joraon Koonwur* v. *Chowdree Doosht Dowun Singh and others.* 19th April 1841. 7 S. D. A. Rep. 26.—D. C. Smyth.

70. By the law as current in the West, the daughter of a son, who died before his father, the original acquirer of the property at issue, has no right to such property during the lifetime of the widow of a grandson in the male line of such original acquirer.[1] *Mt. Brijmalee* v. *Mt. Pran Piaree and another.* 27th Dec. 1841. 7 S. D. A. Rep. 59.—Rattray & Tucker.

(*b*) *Of Widows of Sons, &c.*

71. A Hindú dies leaving four sons: the widows of the first and second sons lay claim to the estate; the fourth son had been adopted into another family, and succeeded to the estate of such other family; and the estate was accordingly divided into three parts, and one-third adjudged to each of the claimants: the remaining third, the share of the third son, who survived the husbands of the claimants, devolved on his legal heirs. *Ranee Bhuwani Dibeh and another*

[1] The Court stated that their order did not touch the question of the right of the son's daughter, on the death of the widow of the original acquirer, should she then press it.

v. *Ranee Sooruj Munee.* 12th May 1806. 1 S. D. A. Rep. 135.—Harington & Fombelle.

72. Ancestral property of an undivided family having descended to an adopted son, will go, on his death, to his widow; and the widow of his adoptive father has no claim to share in the estate. *Vencata Soobummal* v. *Vencummal.* Case 12 of 1818. 1 Mad. Dec. 210.—Scott & Greenway.

73. Where the heirs of a Hindú were a son's son, two daughters of another son, and the widow of a third son, it was held that the grandson takes one-third, the two granddaughters one-third between them, and the widow one-third. *Rai Sham Bullubh* v. *Prankishen Ghose.* 4th July 1820. 3 S. D. A. Rep. 33.—Goad.

74. Semble, If a son die before his father, the father's wife will succeed on his death, in preference to the son's widow; but if the father died first, then the son's wife is heiress on her husband's death, and the mother-in-law gets only a maintenance.[1] *Ramkoonwur* v. *Ummur.* 19th June 1818. 1 Borr. 415.—Elphinston, Keate, & Sutherland.

75. Semble, The Hindú law allows twelve years for the re-appearance of a man missing in his father's lifetime. If, three or four years after his disappearance, his father should die, his wife is not immediately entitled to share in the property of his father, the wife of the son not inheriting to the property of the father-in-law; but after a lapse of twelve years, if no tidings be heard of her husband, and if there be no son, grandson, or great-grandson, she may claim her husband's share of his father's property.[2] *Mt. Ayabuttee* v. *Rajkishen Sahoo.* 25th April 1820. 3 S. D. A. Rep. 28.

76. The widow of a son, who had died in the lifetime of his father, is not entitled to share in the estate of the latter on his death. *Rai Sham Bullubh* v. *Prankishen Ghose.* 4th July 1820. 3 S. D. A. Rep. 33.—Goad. *Mt. Himulta Chowdrayn* v. *Mt. Pudoo Munee Chowdrayn.* 14th Feb. 1825. 4 S. D. A. Rep. 19.—C. Smith & Martin.

77. On a partition, the widow of one of seven sons, who died after his father, was declared entitled to his share as his heir and representative. *Issurchunder Corformah* v. *Govindchund Corformah.* Jan. 1823. Macn. Cons. H. L. 74.

78. A childless widow of the younger son of a Hindú, whose husband died in the lifetime of his father and elder brother, was held not to be entitled, after the death of her father-in-law, her husband's elder brother, and his widow, to share in her father-in-law's estate with the daughters of her husband's elder brother. But if she had preferred her claim after the death of the father and the elder son, when his widow was left with the

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[1] Sir F. Macnaghten has a parallel case in his Considerations on the Hindú Law, p. 1, but this is governed by the law as current in Bengal. When compared with the doctrines of the Mitácshará, which is the standard of law at Bombay, his work will be found to differ in many points, because founded on the doctrines of the Bengal school. It must be remarked, that the order of inheritance laid down therein applies only to the case of a man living separated, and dying without male issue. This order of inheritance is at variance with that of the Mitácshará, but the principle above stated regulates both codes equally.—Borr. And see Menu, B. ix. v. 104. Dáya Bh. c. i. 18. 25, 26. 30. c. iii. s. i. 19. Mit. c. i. s. iii. 1. 2 Macn. Princ. H. L. 104. 106.

[2] In this case, as the father died before his son's death could be presumed, his son must have been considered entitled to inherit, and, through him, his widow. The case was not decided on this point, but on a matter of fact. If the father had outlived the twelve years beyond the time of his son's disappearance, the son's widow would not have been entitled to inherit her husband's share, which, in that case, would have gone to the next heirs of her late husband. A man absenting himself, and as to whom no intelligence arrives of his existence during twenty-four years (in case he should be under fifty years of age), or twelve years (in case he should be above that age), is to be considered dead. His wife then becomes a widow, his property is inherited, and his *Shrád* performed. Steele, 40.

daughters, it would have been held good, because the propriety of the widows of a younger and elder brother sharing in an estate is admitted by the Shastra. After the death of the elder son's widow, no such claim having been made during her lifetime, the daughters of the elder son necessarily inherit their mother's property, and the widow of the younger son retains no right to share in the estate derived by the daughters through their parents from their paternal grandfather *Mt. Jethee and others* v. *Mt. Sheo Baee.* 9th Aug. 1823. 2 Borr. 588.—Romer, Sutherland, & Ironside.

79. The widow of a member of an undivided Hindú family, whose husband died without issue during his father's lifetime, is not entitled to inherit her husband's share of the property. And where the widow of a grandson, who had died before his grandfather, claimed to recover property taken possession of by the children of his grandfather's daughter, her claim was disallowed, with costs. *Ambawow* v. *Rutton Kristna and others.* Nov. 1837. Sel. Rep. 132. —Greenhill.

80. Grandsons (sons of a daughter) were decided, under the *Vyavashta* of the law officer, not to succeed to the property of a deceased Hindú during the life of a daughter-in-law (widow of a son), he leaving no other heirs.[1] *Muha Lukmee* v. *The Grandsons of Kripashookul.* 19th July 1817. 2 Borr. 510.—Prendergast & Sutherland.

81. Where separation has taken place between two brothers, and one of them dies, leaving his son's widow, but no children, she is heiress to his separate estate. *Juvehur Tilukchund* v. *Phoolchund Dhurmchund.* 5th Feb. 1824. 2 Borr. 616.—Romer, Sutherland, & Ironside.

82. It was held that the widow of a sister's son (on whom the estate had devolved) takes the estate, to the exclusion of the sister herself. *Ram Jye Gosain and others* v. *Mt. Ram Ranee Dibea.* 31st March 1825. 4 S. D. A. Rep. 47.—C. Smith.

[1] But see *supra*, p. 307, note 4.

(c) *To Undivided Property.*

83. The widow of a Hindú dying without issue takes her late husband's share of an undivided estate for her life, according to the law as current in Bengal.[2] *Srinauth Serma* v. *Radhakaunt.* 24th Nov. 1796. 1 S. D. A. Rep. 15.—Speke & Cowper. *Bhyroochund Rai* v. *Russoomunee.* 18th Sept. 1799. 1 Do. 27.—Speke & Cowper. *Radhachurn Rai* v. *Kishenchund Rai.* 25th Feb. 1801. 1 Do. 33.—Speke. *Rajbulubh Bhoowyan* v. *Mt. De.* 14th Aug. 1801. 1 Do. 44.—Lumsden & Harington. *Neelkaunt Rai* v. *Munee Chowdrain.* 25th June 1802. 1 Do. 58.—H. Colebrooke & Harington. *Radhamunee Dibeh* v. *Shamchunder and another.* 27th Sept. 1804. 1 Do. 85. —H. Colebrooke & Harington. *Ranee Bhuwani Dibeh and another* v. *Ranee Sooruj Munee.* 12th May 1806. 1 Do. 135.—Harington & Fombelle. *Kaleepershaud Roy and others* v. *Degumber Roy.*[3] 28th May 1817. 2 Do. 237.—Ker & Oswald.

84. By the law as current in Benares, a widow is not entitled to share an undivided estate with her late husband's brethren, and is only entitled to maintenance.[4] *Duljeet Singh* v. *Sheomunook Sing.* 7th Sept. 1802.

[2] 3 Coleb. Dig. 478. Dáya Bh. c. xi. s. i. 6, 7. 14. 43. 46, and notes. 1 Str. H. L. 121. 2 Do. 232, 233, 250. 297. 1 Macn. Princ. H. L. 19. Macn. Cons. H. L. 5, 6. 9. *Sed aliter* according to the doctrine which prevails in Behar and some other schools, by which she would only be entitled to maintenance. Mit. c. ii. s. i. 7. 19.

[3] In adjudging to the widow, in the above case, her share of the estate, although she was not an original plaintiff in the cause, the Courts appear to have been guided by the rule prescribed in Sec. 13. of Reg. III. of 1793.

[4] Mit. c. ii. s. i. 39. 1 Macn. Princ. H. L. 20. 2 Do. 19, note, 21. 23. 192.

1 S. D. A. Rep. 59.—H. Colebrooke & Harington.

85. By the law as current in the West, a widow does not inherit the property of her husband, when held in co-parcenary, but only when held in severalty. *Nund Koonwur* v. *Tootee Singh and another.* 6th Oct. 1814. 4 S. D. A. Rep. 330, note.—H. Colebrooke & Fombelle.

86. By the law as current in Benares, a childless widow is not entitled to succeed to her late husband's estate, which devolved entire and without partition on him from his ancestors, to the exclusion of his brothers. *Raja Shumshere Mull* v. *Rance Dilraj Konwur.* 31st Jan. 1816. 2 S. D. A. Rep. 169.—Harington & Fombelle.

87. By the law as current in Mithila, a childless widow does not succeed to undivided property if her husband left brethren him surviving. *Baboo Runjeet Sing* v. *Baboo Obhye Narain Sing.* 26th July 1817. 2 S. D. A. Rep. 245.—Ker & Oswald. *Mt. Munoruthee Konwur* v. *Raj Bunsee Konwur and another.* 1st Sept. 1842. 7 S. D. A. Rep. 113.—Lee Warner.

88. By the law as current in Mithila, a widow is only entitled to maintenance when the ancestral estate is held in joint tenancy. *Pokhnarain* v. *Mt. Seesphool.* 5th Nov. 1821. 3 S. D. A. Rep. 114.—Goad & J. Shakespear. *Mt. Lalchee Koonwur* v. *Sheopershad Sing and others.* 5th April 1841. 7 S. D. A. Rep. 22.—Lee Warner & D. C. Smyth. *Mt. Joraon Koonwur* v. *Chowdree Doosht Dowun Singh and others.* 19th April 1841. 7 S. D. A. Rep. 26.—D. C. Smyth.

89. Two brothers living undivided, and dying, the one leaving a widow, and the other a widow and a son, the widow of his uncle has no claim; but otherwise, if separation had taken place, when she would have become entitled to her husband's share at his death; nor could her title have been barred by any will of the uncle in favour of his nephew. *Mt. Goolab* v. *Mt. Phool.* 9th Sept. 1816. 1 Borr. 154.—Nepean, Brown, & Elphinston.

90. A childless Hindú widow will not succeed to her husband's share of undivided property if he leave any brothers him surviving. *Govinddas Dhoolubdhas* v. *Muha Luhshumee.* 25th Aug. 1819. 1 Borr. 241.—Nepean, Prendergast, & Warden.

91. Where the widow and daughters of a deceased Hindú claimed against his half brothers for his share of the family estate, suing for a part only of such share, the claim was disallowed, and the half brothers declared to be the proper heirs, as no separation had taken place. *Mankoonwur* v. *Bhugoo.* 5th March 1822. 2 Borr. 139.—Ironside.

92. A widow is not competent to claim a share in undivided ancestral property; nor can she be considered as a co-parcener of the estate: and since she is not a co-parcener, she is not vested with the same rights as the other co-parceners. *Vencata Soobummal* v. *Vencummal.* Case 12 of 1818. 1 Mad. Dec. 210.—Scott & Greenlaw.

93. Ancestral property of an undivided family having descended to an adopted son, on his death is inherited by his widow, and the widow of his adoptive father has no claim to share in the estate. *Ib.*

94. A widow has no right to receive a share of undivided real property. *Gun Joshee Malkoondhur* v. *Sugoona Baee.* 22d Feb. 1823. 2 Borr. 401.—Romer, Sutherland, & Ironside.

95. By the law prevalent in the Madras territories, the widow of an undivided brother has no right to her husband's property, if he should leave a brother him surviving, the brother and not the widow taking the inheritance. *Rungamah* v. *Atchummah.*[1] Case 11 of 1827. 1 Mad. Dec. 521.

96. It was held, that by the death without issue of one of an undivided family during the lifetime of others,

[1] This decree is now in appeal before the Judicial Committee of the Privy Council.

his share of the undivided inheritance reverts to his father, or his direct heirs, and not to his widow.[1] *Ambawow* v. *Rutton Kristna and others.* Nov. 1837. Sel. Rep. 132.—Greenhill.

(d) To Separate Property.

97. Where partition is made between brothers of an undivided estate, the widow of any brother is entitled to his share.[2] *Bhyroochund Rai* v. *Russoomunee.* 18th Sept. 1799. 1 S. D. A. Rep. 27.—Speke & Cowper. *Neelkaunt Rai* v. *Munee Chowdrain.* 25th June 1802. 1 S. D. A. Rep. 58. —H. Colebrooke & Harington. *Ranee Bhuwani Dibeh and another* v. *Ranee Sooruj Munee.* 12th May 1806. 1 S. D. A. Rep. 135.—Harington & Fombelle.

98. If two brothers be disunited, and one of them die, leaving a widow, but no children, the property of the deceased goes to the widow.[3] *Mt. Goolab* v. *Mt. Phool.* 9th Sept. 1816. 1 Borr. 154.—Sir E. Nepean, Brown, & Elphinston. *Govinddas Dhoolubhdas* v. *Muha Lukshumee.* 25th Aug. 1819. 1 Borr. 241.—Sir E. Nepean, Prendergast, & Warden.

99. The childless widow of a Hindú, being a separated brother, is heiress to his own estate, but has no right to a share of the estates of his brothers dying after him; and where, of three brothers, one died leaving a childless widow, another leaving two sons, and the third not leaving either a wife or children, the widow was held to be entitled to her husband's property, obtained, whether real or personal, because he had separated from his brothers; but the real and personal property of the brother who died without wife or issue devolved on the sons of the third brother, because the widow was childless, and because the sons of a brother are declared to be heirs (on failure of the wife, daughter, her son, parents, or a brother) of a man dying separated without male issue. *Pranshunkur and another* v. *Pranhoonnur.* 15th Sept. 1819. 1 Borr. 427.—Romer & Sutherland.

100. According to the law as current in Agra, a childless widow after her husband's death will succeed to the moiety of a village granted to him and his brother by the Rájah of the country, on a rent-free tenure, as partition will be presumed from the circumstance that each brother had possession of a moiety of the village; and of property which falls to a husband on partition his widow is his first heir. She has, however, only a life estate, and cannot alienate it. After her death it will go to her husband's heirs. *Than Sing and another* v. *Mt. Jeetoo.* 2d Dec. 1819. 2 S. D. A. Rep. 320.—Fendall & Goad.

101. The widow of a son succeeds to her father-in-law's separate property to the exclusion of the latter's brother. *Juvehur Tilukchund* v. *Phoolchund Dhurmchund.* 5th Feb. 1824. 2 Borr. 616.—Romer, Sutherland, & Ironside.

102. By the law as current in Behar, the grandson of a paternal uncle is excluded by the widow of a brother's son, if the family were divided. *Mt. Deepoo* v. *Gowreeshunker.* 23d Feb. 1824. 3 S. D. A. Rep. 310.—Ahmuty.

103. Where *A* claimed possession of a certain village (as undivided property descending to him), held by *B* under a grant from the *Péshwá* for a certain time; it appearing on evidence that the property was divided, that *B* was entitled to half the village as widow of her deceased husband, who inherited an equal share with *A* of the divided property of their common ancestor, and that the whole village had been granted to her in compensation for loss sustained by her from *A*'s previously excluding

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[1] Mit. c. ii. s. i. 8. 39.

[2] Mit. c. ii. s. i. 8. 30. 39. Dáya Bh. c. xi. s. i. 6. 19, 20. 3 Coleb. Dig. 458. 478. 483. 1 Str. H. L. 134. 234. 2 Do. 233. 250. 1 Macn. Princ. H. L. 19. 2 Do. 19.

[3] Mit. c. ii. s. i. 30.

her from the property; the Court held that *B* was entitled to half of the income of the village. With regard to the exclusive possession by *B*, in consequence of the exclusive possession held before by *A*, it was directed that *A* should account for the produce during his possession, and *B* for that during her's, and that a balance should be struck. Failing such adjustment, *A* might, in order to get his share, file an action to compel a settlement; but until either one or other course was pursued, the whole village was decreed to remain in the possession of *B* for the same period that exclusive possession was held by *A*. *Ruvee Bhudr Sheo Bhudr* v. *Roopshunker Shunkerjee*. 13th May 1824. 2 Borr. 656.—Romer, Sutherland, & Ironside.

104. If an adopted son renounce his share in the estate of his adoptive father, and should such share be part of a divided heritage, the widow of the adoptor will succeed to it. *Ib.*

105. By the law as current in Mithila, where there are no sons, a widow inherits, during her life, property which belonged solely to her husband; but without the power of alienating it. *Mt. Lalchee Koonwur* v. *Sheopershad Sing and others*. 5th April 1841. 7 S. D. A. Rep. 22.—Lee Warner & D. C. Smyth. *Mt. Joraon Koonwur* v. *Chowdree Doosht Dowun Singh and others*. 19th April 1841. 7 S. D. A. Rep. 26.—D. C. Smyth.

106. By the law as current in the West, a widow succeeds to the inheritance of her husband, living separated from his ancestral family, in default of sons, grandsons, and great-grandsons. *Raj Koomar Bissessur Komar Sing* v. *Mt. Sookh Nundun Koor*. 9th April 1842. 7 S. D. A. Rep. 87. 2 Sev. Cases, 69.—Dick & Shaw.

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5. *Of Daughters, their Sons, &c.*

107. A daughter will inherit to her father leaving neither male issue nor a widow, provided such daughter be mother of a son, or likely to become so.[1] *Gudadhur Serma* v. *Ajodhearam Chowdry*. 30th Oct. 1794. 1 S. D. A. Rep. 6.—Sir J. Shore, Speke, & Cowper.

108. Daughters, having male issue living at the decease of their father's widow, were held to be entitled to equal shares of their late father's estate. *Mt. Bijya Dibeh* v. *Mt. Unpoorna Dibeh*. 26th Sept. 1806. 1 S. D. A. Rep. 162.—H. Colebrooke & Harington.

109. A Hindú dies, leaving a married daughter and a nephew, the daughter succeeds to his property[2]; but on her death without issue it will go away from her husband, and descend to the nephew.[3] *Ramjoy See* v. *Tarrachund*. 12th June 1816. East's Notes, Case 33.

110. But otherwise, if the daughter bear a son.[4] *Ib.*

111. According to the law as current in Bengal, on the death of a widow who had claimed her husband's property, her daughter will inherit, to the exclusion of her husband's brother, if the daughter have, or be likely to have, male issue[5]; and on her death without male issue the property goes to her father's brother in preference to her husband.[6] *Raj Chunder Das* v. *Mt. Dhunmunee*. 24th May 1824. 3 S. D. A. Rep. 361.—Ahmuty.

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[1] Menu, B. ix. v. 130. Mit. c. ii. s. i. 2. s. ii. 2. 6. Dáya Bh. c. xi. s. ii. 3. 3 Coleb. Dig. 186. 457. 491. 597. 1 Macn. Princ. H. L. 21. 23. 1 Str. H. L. 137, 138. 2 Do. 236. Mayuc'ha, c. iv. s. viii. Steele, 70. Dáya Cr. San. c. i. s. iii. 4.

[2] 3 Coleb. Dig. 490. Dáya Cr. San. c. i. s. iii. 1.

[3] 1 Macn. Princ. H. L. 22. Dáya Bh. c. xi. s. ii. 30. 3 Coleb. Dig. 494. 497. 1 Str. H. L. 139. Dáya Cr. San. c. i. s. iii. 3.

[4] 3 Coleb. Dig. 498.

[5] According to the law of Benares, an undivided brother's female heirs are excluded by his male co-parceners. Mit. c. ii. s. i. 8. 39. 2 Macn. Princ. H. L. 47. And see Steele, 233.; and App. A. 56.; where, by the customs of certain Casts, a daughter is excluded by brothers.

[6] 2 Macn. Princ. H. L. 57.

112. A claim by a woman to inherit certain property as heiress to her father and brothers was held to be barred by her mother having outlived her brothers, and by her not having had a son alive at the time of their decease[1]; and also by her last surviving brother having, previous to his death, executed a deed of gift in favour of the male heir. *Ram Munee Chowdrayn* v. *Hamilta Chowdrayn.* 6th Jan. 1835. 6 S. D. A. Rep. 3.—Robertson.

113. A daughter takes no share of the inheritance where there are brothers living at the time of the father's death. *Yachereddy Chinna Bassapa and others* v. *Yachereddy Gowdapa.* 4th Dec. 1835. 3 P. C. Cases, Case 5.

114. Among the Jumboo Brahmans, a daughter of a man leaving no male issue succeeds to the property of her father, whether divided or undivided, and her daughter succeeds to her.[2] *Dessaees Hurreeshunkur and Roopshunkur* v. *Baees Mankoovur and Umba.* 6th Sept. 1838. Sel. Rep. 122. — Giberne, Pyne, & Greenhill.

115. An adoption having been set aside, the estate was adjudged to the collateral heirs of the last male proprietor; viz. to six sons of the daughters of the grandfather of the deceased[3] (four of whom were born prior, and two subsequently to his death) in equal shares; with reservation of the rights of any other sons or daughters of such daughters who might be born after the decree. *Mt. Solukhna* v. *Ramdolal Pande and others.* 27th May 1811. 1 S. D. A. Rep. 324.—Harington.

116. The son of an adopted son dying without issue, the estate, after his widow's death, should he leave one, will go to the sons of the daughters of his adoptive grandfather, in the event of the latter not having left male issue. *Baboo Gurwurdharee Singh* v. *Kulahul Sing and others.* 19th Jan. 1825. 4 S. D. A. Rep. 9. —C. Smith.

117. Property inherited by a daughter goes, at her death, to her son or grandson, to the exclusion of her sister and sister's son.[4] *Mt. Bijia Dibia* v. *Mt. Unnapoorah Dibia.* 19th April 1820. 3 S. D. A. Rep. 26.—C. Smith.

118. It was held that the sons of a daughter of a Hindú deceased are entitled to his estate, in preference to the grandsons, by lineal descent in the male line, of his full brother.[5] *Jug Mohun Moherjee and another* v. *Punchanund Chatterjee and another.* 27th June 1825. 4 S. D. A. Rep. 67.—C. Smith & Sealy.

119. The author of the Vivádа Chintámani, a Mithila work, has omitted the daughter's son from the series of heirs; but according to other authorities, including Mithila legal writers, the right of a daughter's son, next to a daughter, is declared. In a claim by a daughter's son, the Court held that such daughter's son is heir, disregarding his omission in the said work; and thus ruling that the position in the Dáya Crama Sangraha, that a daughter's son, according to the Mithila writers, is not heir, is erroneous.[6] *Surja Kumari* v. *Gandh-*

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[1] 3 Coleb. Dig. 502.

[2] But this is merely by custom: the right of the daughter's daughter is not acknowledged, though some authority may be found for it. 1 Str. H. L. 139. Macn. Cons. H. L. 6, 7. 2 Macn. Princ. H. L. 88, note.

[3] Menu, B. ix. v. 136. Dáya Bh. c. xi. s. ii. 25. 3 Coleb. Dig. 498. 2 Macn. Princ. H. L. 186.

[4] Menu, B. ix. v. 132. 1 Macn. Princ. H. L. 24. 2 Do. 186. Steele, 70. Dáya Cr. San. c. i. s. iv. 1.

[5] 2 Macn. Princ. H. L. 50.

[6] Sir W. H. Macnaghten (1 Princ. H. L. 23.) states, that "the right of daughters' sons is not recognized in the Mithila school;" but it seems that he adopted this position without sufficient investigation of the subject. A popular rumour is said to exist in Mithila, that *Vachaspati Misr*, the author of the Chintámani, was dissatisfied with his own daughter's son, his presumptive heir. In a Madras case, several witnesses of the plaintiff (who was an inhabitant of Malabar on the western coast) agreed in deposing

rap Sing and others. 23d Feb. 1837. 6 S. D. A. Rep. 142.—Rattray & Money.

120. A son's daughter's son was held to inherit in preference to a daughter's son.[1] *Phoolchund Soorchund* v. *Umurchund Jogeedas.* 12th April 1814. 1 Borr. 401.—Crow & Prendergast.

121. The brother's daughter's son, and the grandson of a daughter's son, cannot inherit, even though there should be no other heirs.[2] *Ilias Coonwur* v. *Agund Rai.* 24th May 1820. 3 S. D. A. Rep. 37.—Fendall & Goad.

122. According to the law as current in the West, the daughter of a son dying in the lifetime of his father, the original acquirer of the property at issue, has no right during the life of the widow of a grandson, in the male line, of such original acquirer. *Mt. Brijmalee* v. *Mt. Pran Piaree and another.* 27th Dec. 1841. 7 S. D. A. Rep. 59.—Rattray & Tucker.

122 *a. Quære,* as to the nature of the estate vested in a Hindú female entitled to succeed to land upon the death of her father? *Doe dem. Colly Doss Bose* v. *Debnarain Koberauj and another.* 30th Oct. 1843. 1 Fulton, 329.

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6. *Of Parents.*[3]

123. A Hindú dies, leaving a married daughter and a nephew: the daughter succeeds to his property; and if she bear a son he excludes the nephew; and on the death of such son the father[4] (*i.e.* the husband of the daughter) succeeds. *Ramjoy See* v. *Tarrachund.* 12th June 1816. East's Notes. Case 53.

124. Held, that the father of a donee under a *Krishnarpan* inherits the property, to the exclusion of the family of the donor. *Kaseeram Kriparam* v. *Mt. Ichha.* 24th July 1823. 2 Borr. 502.—Romer, Sutherland, & Ironside.

125. The mother succeeds to her son, leaving no widow, nor issue male or female.[5] *Gudadhur Serma* v. *Ajo-*

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that according to the usages of his Cast—the Cast not, however, being mentioned—adoption is necessary to constitute the sons of daugnters lawful heirs on failure of sons. *Anon.* Case 10 of 1817. 1 Mad. Dec. 157.—Scott, Greenway, & Ogilvie.

[1] The validity of this decision depends entirely on the point, whether the grandfather died before or after his son; for in the latter case, the daughter, and consequently her son, would inherit before the son's daughter or her son.

[2] A brother's daughter's son is a *Sapinda,* but not a *Sagotra,* of his grandfather and uncle, and consequently cannot inherit. This description of persons are not considered *Sapindas* generally, but only by *Madhuracharjya,* in his commentary on the Purasura Madhuva, a treatise current in Benares. It is universally admitted, however, that they are not *Sapindas* for the purpose of inheritance, and that they do not rank even among the most remote description of heirs, as in the following text of *Baudáyana,* in Colebrooke's Digest: "The paternal great-grandfather and grandfather, the father, the man himself, his uterine brother by a woman of equal class with the father, his son, his son's son, and the son of that grandson, all these partaking of undivided oblations, sages pronounce *Sapindas,* or near kinsmen, allied by funeral cakes; those who share divided oblations they call *Saculyas,* or distant kinsman, allied by family, male issue by males being left, the estate of the father surely must go to them. On failure of *Sapindas,* the spiritual teacher, the pupil, or the priest usually employed at sacrifices, shall take the estate: on failure of them, the King."—Macn. *Tercálancára,* however, expressly states the right of the brother's daughter's son to inherit in default of the father's daughter's son.—Daya Cr San. c. i. s. x. 2.

[3] For the succession of parents, by the custom of various Casts, see Steele, 233, and App. A. 57.

[4] Dáya Bh. c. xi. s. i. 5. s. iii. 1. 3 Coleb. Dig. 186. 489.

[5] Nor a father. According to the law of Bengal, the title of the father to the inheritance prevails over that of the mother: the majority of writers of eminence adhere to the same doctrine. Dáya Bh. c. xi. s. i. 5. s. iii. s. iv. 3 Coleb. Dig. 186. 505. 1 Macn. Princ. H L. 25 2 Do. 54. May. c. iv. s. viii. 14, 15. Dáya Cr San. c. i. s. v 1. s. vi. 1. The Mitacshará, however, upholds the succession of the mother before the father. Mit. c. ii. s. iii. 1—5, and note. See also 3 Coleb. Dig 504, 505., and 1 Str. H. L 141. Steele, 70.

dhearam Chowdry. 30th Oct. 1794. 1 S. D. A. Rep. 6.—Sir J. Shore, Speke, & Cowper.

126. In a case of partition, a widow was held to be entitled to two shares; one in her own right, and another as heir to her son, who had died childless after his father.[1] *Isserchunder Corformah* v. *Govindchunder Corformah and others.* Nov. 1812. Jan. 1813. Cited in East's Notes, Case 124. Macn. Cons. H. L. 74.

127. The mother succeeds in preference to the sister, in default of sons, widow, and daughter.[2] The mother thus inheriting to the son, the inheritance will descend after her death to his, and not to her, particular heirs; and she cannot alien, during her life, to their prejudice.[3] *Doe dem. Ramasamy Moodeliar* v. *Vallatah.* 2d Aug. 1813. 2 Str. 211.

128. In the case of a son surviving his father, the estate will vest in him; and on his death, being an infant, and unmarried, the estate will go to his mother: but if his mother should have died before him, the estate shall not go to another wife of his father; although, if the son had died in the lifetime of the father, the latter's estate would have gone to his widows. *Sree Motee Jeomony Dossee* v. *Atturam Ghose.* 10th Dec. 1823. Macn. Cons. H. L. 64.

129. The grandmother (father's mother) is the heir of an unmarried infant male, whose own mother is dead[4], in preference to any other wife of his father. Her daughters-in-law (the father's widows) are entitled to maintenance. *Ib.*

130. The right which a Hindú mother has in property inherited from her son is the same as that which a widow has in property inherited from her husband; and where a mother inherits from her son, the estate goes, on her death, not to her own heirs, but to the nearest heir of her deceased son.[5] *Mt. Bijya Dibeh* v. *Mt. Unpoorna Dibeh.* 26th Sept. 1806. 1 S. D. A. Rep. 162.—H. Colebrooke & Fombelle. *Nufur Mitr and another* v. *Ram Koomar Chuttoorjya and others.* 26th May 1828. 4 S. D. A. Rep. 310.—Rattray.

131. The mother of a deceased Brahman, who left a widow, has no interest in his property, nor can she derive any from any agreement with the widow to divide it. *Mt. Joymunnee Dibia and another* v. *Fakeer Chundur Chuhurbutty.* 25th March 1829. 4 S. D. A. Rep. 337.—Turnbull.

132. A Hindú died, leaving two widows, a son by one of them, and the son of a paternal uncle. The son succeeds to his entire estate. On the son's death, his mother succeeds to a life interest in the property; and on her death it goes to the heirs of the son, viz. the son of the paternal uncle, the stepmother being only entitled to maintenance. *Bhyrobee Dossee* v. *Nubhissen Bhose.* 23d Feb. 1836. 6 S. D. A. Rep. 53.—Halhed.

133. By the law as current in Bengal, the mother succeeds in default of son, grandson, and great-grandson, in the male line, wife, daughter, daughter's son, and father.[6] The mother thus inheriting has no power to alienate ancestral property. *Hemlutta Debea* v. *Goluck Chunder Gosayn and another.* 1st July 1842. 7 S. D. A. Rep. 108.—Reid & Barlow.

134. And on the mother's death the property will devolve on the heirs of her son. *Ib.*

135. Suit for a *Zamíndárí* in Orissa by the father's sister against the stepmother of the late *Zamíndár*, who left no issue, having died unmarried. At his death there were living, besides

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[1] Dáya Bh. c. xi. s. iv. 3 Coleb. Dig. 489. 502.
[2] 3 Coleb. Dig. 476.
[3] 3 Coleb. Dig. 505.
[4] Menu, B. ix. v. 217.
[5] Dáya Bh. c. xi. s. i. 60. s. iv. 7, note. 1 Macn. Princ. H. L. 25. 1 Str. H. L. 144. Macn. Cons. H. L. 7.
[6] Dáya Bh. c. xi. s. i. 5. 2 Macn Princ. H. L. 61.

the plaintiff and defendant, a third wife of the grandfather, with her two daughters, half-sisters of the father. One of these afterwards was married, and produced a son during the suit. The Sudder Dewanny Adawlut adjudged, under an opinion given by their Pandits, that, at the *Zamíndár's* death, the estate vested in the defendant as heir; and having once vested, could not be devested by the subsequent birth of male issue to other female relations.[1] *Sed quære. Bishenpirea Munee* v. *Ranee Soogunda.* 25th Sept. 1801. 1 S. D. A. Rep. 37.—Lumsden & Harington.

136. Held, that according to the law as current in Bengal, a stepmother does not inherit to her stepson.[2] *Narainee Dibeh* v. *Hirkishor Rai.* 24th Dec. 1801. 1 S. D. A. Rep. 39.—Lumsden & Harington. *Lahhi Priya* v. *Bhairab Chandra Chaudhari.* 29th Aug. 1833. 5 S. D. A. Rep. 315.—Walpole. *Bhyrobee Dossee* v. *Nubkissen Bhose.* 23d Feb. 1836. 6 S. D. A. Rep. 53.—Halhed.

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7. *Of Brothers, their Sons, &c.*

137. A brother inherits to his brother, leaving neither widow, father, mother, nor issue.[3] *Gudadhur Serma* v. *Ajodhearam Chowdry.* 30th Oct. 1794. 1 S. D. A. Rep. 6.—Sir J. Shore, Speke, & Cowper.

138. Illegitimate sons of a Súdra, succeeding to their father, and living and dying undivided, succeed to each other. *Vencataram* v. *Vencata Lutchema Ullam and another.* 23d Feb. 1815. 2 Str. 304.

139. By the law as current in Mithila, a childless widow will not succeed to her husband's share of a joint undivided estate if he have any brothers him surviving; they, and not the widow, succeeding to his share. *Baboo Runjeet Sing* v. *Baboo Obhye Narain Sing.* 26th July 1817. 2 S. D. A. Rep. 245.—Ker & Oswald. *Mt. Joraon Koonwur* v. *Chowdree Doosht Dowun Sing and others.* 4th April 1811. 7 S. D. A. Rep. 26.—D. C. Smyth.

140. A Hindú dying, leaving a brother and a widow, but no children, the undivided estate is inherited by the brother, and the widow is entitled to maintenance only. *Govinddas Dhoolubhdas* v. *Muha Lukshu-*

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[1] The opinion delivered by the Pandits in this case must have been founded on a notion that the authorities of the law prevailing in Orissa are not those that are received in Bengal, but in the Dakhin; for in a law opinion delivered by the same Pandits in the same year (*Narainee Dibeh* v. *Hirkishor Rai*, 1 S. D. A. Rep. 39.) they take this distinction, declaring that, according to the books current in Bengal, the stepmother does not inherit, but the natural mother only; and according to the books of the Dakhin (as the Mitácshará, &c.), the single word "mother" (*mátá*) is interpreted both "mother" and "stepmother." But as the authorities followed in Orissa are the same with those of Bengal, the grounds of the Pandit's opinion appear to be incorrect.

Nor do the books to which the Pandits refer (viz. the Mitácshará, &c.) allow that latitude of interpretation, when expressly treating of the succession of parents to their children, but in other places the question is different. From the text of the Mitácshará, and the argument on which the author prefers the mother before the father as successor to her son, it is apparent that he meant the natural mother, and not the stepmother (Mit. c. ii. s. iii. 32. 51.); nor is there any passage in books of authority, so far as research has gone, which expressly declares the stepmother's right of succession. Upon the death of the stepmother, which afterwards took place, the inheritance devolved on the grandsons, through females, of her stepson's paternal grandfather, and was adjudged to them against other claimants.—Coleb.

[2] See note to the preceding case, and *supra* p. 313, note 3. Menu, B ix. v. 185. Dáya Bh. c. iii. s. ii. 30. s. xi. 3, 4. 2 Macn. Princ. H. L. 31. 62. It is by no means clear that in other places than Bengal a stepmother has any right to succeed to the property. At a partition she would, according to the law of Benares, come in for a share. 2 Macn. Princ. H. L. 64, note. *Tercálancára* says, that by the law of Mithila the stepmother is entitled to share on partition. Dáya Cr. San. c. vii. 7.

[3] Dáya Bh. c. xi. s. i. 5. 15. s. v. 3 Coleb. Dig. 507. Mit. c. ii. s. iv. Steele, 70. Dáya Cr. San. c. i. s. vii. 1.

mee. 25th Aug. 1819. 1 Borr. 241. —Nepean, Prendergast, & Warden.

141. The same point was decided in *Rungama* v. *Atchumma and others.*[1] Case 11 of 1827. 1 Mad. Dec. 521.

142. Where there are two sons of one common ancestor succeeding to ancestral property, and one of those sons dies without male issue, the surviving son, and not the deceased's widow or daughter, is entitled to the succession. *Sevageana Pungoothy Vencata Letchoomy Nachiar and another* v. *Aundy Letchoomy Ammaul and others.* Case 14 of 1824. 1 Mad. Dec. 485.—Ogilvie, Grant, Gowan, & Lord.

143. Where a person acquires wealth, either at home or abroad, by his own exertions, and dies without separating, his brother inherits the property, to the exclusion of the widow and mother. *Man Baee* v. *Krishnee Baee.* 31st Oct. 1821. 2 Borr. 124.—Sutherland & Ironside.

144. Property which had devolved on a widow at the death of her husband, goes, at her death, to her husband's younger brother, to the exclusion of his elder brother's son.[2] *Rooder Chunder Chowdhry* v. *Sumbhoo Chunder Chowdhry.* 8th Aug. 1821. 3 S. D. A. Rep. 106.—Goad & Dorin.

145. Two brothers, possessed of an undivided estate in Mithila, and one dying leaving a widow, a daughter, and daughter's sons, the surviving brother succeeds to his share, to the exclusion of his brother's widow and issue. *Pokhnarain and others* v. *Mt. Seesphool.* 5th Nov. 1821. 3 S. D. A. Rep. 114.—Goad & Shakespear.

146. According to the law as current in Bengal, on the death of a widow, the property which had devolved on her at her husband's death will go to her husband's brother, to the exclusion of his nephews. *Mt. Jymunee Dibiah* v. *Ramjoy Chowdree.* 6th Jan. 1824. 3 S. D. A. Rep. 289.—Leycester & Harington.

147. A Hindú leaves a widow, a married daughter, and a brother; the widow claims the property: on her death, the daughter succeeds, if she have or be likely to have male issue; but on her death without male issue, the father's brother succeeds, to the exclusion of the daughter's husband. *Raj Chunder Das* v. *Mt. Dhunmunee.* 24th May 1824. 3 S. D. A. Rep. 361.—Ahmuty.

148. A brother's son will inherit his uncle's property on the death of his uncle's married daughter without issue, to the exclusion of her husband. *Ramjoy See* v. *Tarrachund.* 12th June 1816. East's Notes. Case 53.

149. Two brothers living undivided, and dying, one leaving a widow, and the other a widow and a son, the son succeeds to his uncle's estate, to the exclusion of his widow.[3] *Mt. Goolab* v. *Mt. Phool.* 9th Sept. 1816. 1 Borr. 154. — Nepean, Brown, & Elphinston.

150. *Sed aliter*, If separation had taken place.[4] *Ib.*

151. The sons of a brother are heirs (on failure of the wife, daughter, her son, parents, or a brother) of a man dying separated without male issue.[5] *Pranshunkur and another* v. *Pranhoonwur.* 15th Sept. 1819. 1 Borr. 427.—Elphinston, Romer, & Sutherland.

152. Where two women claimed against their mother's first cousin on the father's side for their maternal grandfather's share of the family estate, their claim was disallowed, as a separation between the brothers,

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[1] The decree in this case is now in Appeal before the Judicial Committee of the Privy Council.

[2] *Srikrishna's* note in the Dáya Bh. at the end of c. xi. s. vi. Mit. c. i. s. v. 8.

[3] Dáya Bh. c. xi. s. i. 9. 2 Macn Princ. H L. 28.

[4] Mit. c. ii. s. i. 8.

[5] Dáya Bh. c. xi. s. vi. 1, 2. 3 Coleb. Dig. 527. Mit. c. i. s. iv. 7. Steele, 70. Daya Cr. San. c. i. s. viii 1.

viz. their maternal grandfather and his brother, was not proved, and the share of the former therefore descended in the male line to his brother's son, in preference to his daughters and granddaughters. *Ichharam Gopal* v. *Lar Baee.* 27th June 1822. 2 Borr. 309.—Romer, Sutherland, & Ironside.

153. According to the law as current in Behar, the grandson of a paternal uncle is excluded from the inheritance by a brother's son, and on the brother's son's death, by his widow, if the family were divided. *Mt. Deepoo* v. *Gowreeshunkur.* 23d Feb. 1824. 3 S. D. A. Rep. 307.—Harington & Ahmuty.

154. An uncle and nephews were in a state of general severalty, but held some ancestral property in common. Such tenure, by the law of the Western schools, will not establish the right of the nephews to take their uncle's estate before his wife and daughter's son.[1] *Raja Patni Mal and another* v. *Ray Manohar Lal and others.* 14th April 1834. 5 S. D. A. Rep. 349.—H. Shakespear, Braddon, & Halhed.

155. The half-brothers of a Hindú deceased were held to be entitled to his share of undivided property, excluding from the inheritance his widow and daughters.[2] *Mankoonwur* v. *Bhugoo.* 5th March 1822. 2 Borr. 139.—Ironside.

156. Property which had devolved on a widow at the death of her husband without children, goes, at her death, to her late husband's half-brother, to the exclusion of his maternal grandfather's brother's grandchildren. *Ramchunder Surma* v. *Gungagovind Bunhoojiah.* 1st Feb. 1826. 4 S. D. A. Rep. 117.—Ross.

157. Semble, A half-brother succeeds to the property of another half-brother, although they may be descended from different maternal grandfathers. *Ib.*

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8. *Of Sisters, their Sons, &c.*

158. Where property, real and personal, had been given by a Hindú to his concubine, and had descended, at her death, to two surviving daughters; it was held, that on the decease of one daughter the sister should take her share, and that the lawful wife of the father had no claim. *Mt. Runnoo* v. *Jeo Ranee.*[3] 8th April 1795. 1 S. D. A. Rep. 8.—Speke.

159. In inheritance by sisters, according to the construction of the law received in Mithila, the term "sister" includes also the half-sister. *Sreenarain Rai and another.* v. *Bhya Jha.* 27th July 1812. 2 S. D. A. Rep. 33.—Harington & Stuart.

160. Where a Hindú died, leaving property which had descended to him from his maternal grandfather; it was held that his sister and her sons succeeded to such property, in preference

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[1] Mit. c. ii. s. ii. 6.

[2] Daya Bh. c. xi. s. v. 9. 3 Coleb. Dig. 507. Daya Cr. San. c. i. s. vii. 2.

[3] It is remarked in a note on this case, that the property had been alienated by gift, and the widow of the giver, as his heir, had no legal pretension to the succession or reversion of such property on the death of a daughter of the person to whom it had been given. Her claim, therefore, was very rightly rejected. But in failure of what heirs, or in preference to what other successors a sister inherits, is a question on which difference of doctrine exists.—See Mit. c. ii. s. iv. 1, note, in which *Bálambhatta* states, that the word "brethren" signifies "brothers and sisters," in the same way that "parents" have been explained "mother and father."—1 Str H. L. 146. 2 Do. 243. 245. The right of the sister to inherit is distinctly recognized in the Mayuc'ha, c. iv. s. viii. 19.; where, speaking of the degrees of succession to the estate of one dying without male issue, the sister is declared next heiress on failure of eight preceding (the widow, &c.), on the authority of Menu, B. ix. v. 187. 1 Borr. 72. n. Sir F. Macnaghten denies the right of the sister to succeed as the heir of another sister; but one sister may succeed to another in the wealth which had been derived from their father; in which case she will succeed, not as her sister's, but her father's heir. Macn. Cons. H. L. 1. 7. 10.; and see 2 Macn. Princ. H. L. 85.

to his paternal aunt.[1] *Laroo* v. *Sheo and others.* 6th Oct. 1813. 1 Borr. 71.—Nepean, Brown, & Elphinston.

161. A Hindú dying and leaving three sisters, two of whom died, each leaving a son and daughters, the surviving sister is heir to her brother: however, should she of her own free will resign her right to the property, the sons of the other two sisters will succeed each to a half part of it, as their own sisters again have no right to share.[2] *Ichharam Shumbhoodas* v. *Prumanund Baeechund.* 11th June 1823. 2 Borr. 471.—Sutherland.

162. The sister of a childless widow, and not her paternal first cousin, succeeds to her estate by the law as current in Bengal. *Rai Sham Ballabh* v. *Prankrishn Ghos.* 29th March 1830. 5 S. D. A. Rep. 21. —Turnbull.

163. By the law as current in Bengal, the son of the sister of a Hindú deceased will inherit his property, in preference to the son of his paternal uncle.[3] *Rajchunder Naraen Chowdry* v. *Goculchund Goh.* 22d June 1801. 1 S. D. A. Rep. 43.—Lumsden & Harington.

164. But Semble, the reverse would have been the case according to the law of Mithila.[4] *Ib.*

165. Where two of four daughters died in the lifetime of their mother, and one of them left a daughter, which daughter sued her aunts for a fourth of the property in right of her mother[5], it was held that there was no legal foundation for the claim, the right of the sister having lapsed by her death during her mother's lifetime. *Mt. Abea and another* v. *Esur Chund Gungolee.* 2d April 1819. 2 S. D. A. Rep. 290.—Fendall & Goad.

166. By the law as current in Bengal, sons, born and unborn, of a whole sister (married within the proper time), will take her pre-deceased father's estates, which had vested in her minor brother, and who had died before his marriage. Her son excludes his paternal first cousins, and the son of a half-sister.[6] *Ram Dulal Nag* v. *Rajiswari and others.* 18th Nov. 1812. 5 S. D. A. Rep. 55.—Fombelle.

167. By the law as current in Bengal, a sister's son (even though unborn or unbegotten at the time of his maternal uncle's death) is an heir preferable to the son of the paternal uncle of the deceased; and a sister likely to produce male issue (though having none) enters on the succession of her deceased brother's estate, as trustee for such male issue, to the

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[1] This case was decided on the authority of the Mayuc'ha. The principle avowed by the law officers, which governed the decision, seems rather to have been the acquisition of the property through the female or maternal line.—Steele, 71, note.

[2] Sir W. Macnaghten refers to this and the preceding case, and says, "this admission of the sister seems peculiar to that side of India" (Bombay). See Colebrooke, cited in 2 Str. H. L. 243. 1 Macn. Princ. H. L. 35, note. Mit. c. ii. s. iv. 1, note.

[3] The right of the sister's son is recognized by the law of Bengal. Dáya Bh. c. xi. s. vi. 8. 2 Macn. Princ. H. L. 82. 84, 85. But according to the law as current in Benares, the sister's son is not expressly mentioned as an heir, and, at all events, can come in only in default of all *Samanodacas*, or lineal male descendants, as far as the fourteenth in degree. 2 Macn. Princ. H. L 85, note.

[4] The books of the greatest authority in Mithila are silent in regard to the sister's son; and the established opinion is, that the male descendant of the remoter ancestor shall inherit, and not a descendant through females of a near ancestor.—Coleb.

[5] The succession of daughters of daughters does not appear to be sustainable (1 Str. H. L 139.); but *Bálambhatta* upholds their right to the inheritance, in his commentary on the Mitácshará, c. ii. s. ii. 6, note. Sir W. Macnaghten says, that though there are not wanting authorities for the right of succession of a daughter's daughter, the doctrine is nowhere respected. 2 Princ. H. L. 88, note. Sir F. Macnaghten denies their right to inherit at all. Cons. H. L. 6, 7.

[6] Dáya Bh. c. i. 45, and note. c. vii. 12. *Srikrishna's* note at the foot of c. xi. c. xi. s. i. 4. s. vi. 8, 9. 19. 2 Macn. Princ. H. L. 44. 83.

exclusion of his paternal uncle's son.[1] *Karuna Mai and others* v. *Jai Chandra Ghos.* 15th July 1830. 5 S. D. A. Rep. 42. — Turnbull. Confirmed, on review of judgment, by the same Judge. 5th Dec. 1831.

168. The same principle was acknowledged in *Kishn Lochan Bose* v. *Tarini Dasi.* 24th Aug. 1830. 5 S. D. A. Rep. 55.—Leycester.

168 *a*. Where a Hindú died childless, leaving the sons of paternal uncles, two childless sisters, one sister who had produced male issue, and a sister-in-law, it was held that the sister who had produced male issue was entitled, according to the law of Bengal, to the inheritance, as trustee for her heritable issue, both born and unborn, at the death of her paternal uncles.[2] *Adaitachand Mandal and others, Petitioners.* 17th Aug. 1843. 2 Sev. Cases, 131.—Tucker, Reid, & Barlow.

169. But it was held, that under the law as received in Bengal, although the sister's son is an heir preferable to the paternal uncle's son, yet the right of succession cannot remain in abeyance in the expectation of the future production of such heir, not conceived at the time the succession opened.[3] *Lakhi Priya* v. *Bhairab Chandra Chaudhuri.* 29th Aug. 1833. 5 S. D. A. Rep. 315.—Walpole.

170. On the death of a Hindú landed proprietor, his estate, inherited by him from his father, was awarded, by a decree of Court, to the sons of his whole sisters: at the same time it was held, with reference to such decree, that under the Hindú law as current in Bengal, a son subsequently born to one of the sisters was not entitled to share.[4] *Aulim Chund Dhur* v. *Bejai Govind Burrall and others.* 26th March 1838. 6 S. D. A. Rep. 224.—Rattray.

171. Where a Hindú in Bengal dies possessed of ancestral property, his sister's son (the father's daughter's son) succeeds to his maternal uncle's estate, to the exclusion of the paternal uncles of the latter.[5] *Sumbochunder Ray and another* v. *Gunga Churn*

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[1] 2 Macn. Princ. H. L. 84.

[2] The opinion of the Court in this case was, that the act of birth, or of conception of an heir in the womb, was one and the same thing in the eye of the Bengal law, only that the birth of the infant must be awaited; because, if the issue be a daughter, she would have no title: if a son, he would inherit.

[3] *Sed quære de hoc*, This case was adjudged, with reference to official opinions of some Pandits and unofficial opinions of others, contrary to some official opinions, that of the Pandit of the Sudder Dewanny Adawlut included. The latter, however, had not invariably held the same opinion, as may be seen on reference to his *Vyavashta* in the case of *Karuna Mai*, on review of judgment (5 S. D. A. Rep. 44.); and also in *Mt. Solukhna's* case (1 Do. 324.); and *Aulim Chund's* case (6 Do. 224.)

It may be remarked, that the principle of the decision in the case, viz. that the right of the father's daughter's son is conditional, on the existence, at the time of the death, of his maternal uncle, or of his mother, if she intervene as an heir, was supported by the Pandits in no less than four instances.

[4] It will be seen by the preceding cases, that much difference of opinion exists as to the right of a sister's son, born after the death of his maternal uncle, to succeed to ancestral property as a father's daughter's son. In this case a decree of Court had intervened prior to the birth of the infant, for whom the appellant claimed, fixing the shares of the several sister's sons in existence at the time of the death of the maternal uncle; and it was this circumstance, under the Pandit's exposition of the law, that governed the decision, the Judge remarking—"If a fresh division is to take place at each new birth, the 'vested right' of any member of the family is a misnomer." The Pandit stated, that the division of the property under the authority of the ruling power in conformity with the law could not be affected by any subsequent occurrence; and thus attempted to account for the discrepancies in his *Vyavashtas* in previous cases. He quoted Menu, B. ix. v. 47., and a text of *Náreda*, cited in the Vivada Bhangárnava, and other works: "The subjects are under the authority of the ruler, and the ruler is at liberty to give orders to his subjects."

[5] Dáya Cr. San. c. i. s. x 1 In this case the Pandit, in his *Vyavashta*, added, that should the sister have had no son, she would be entitled to hold possession as long as there was hope of her bearing one. The

Sein. 24th July 1840. 6 S. D. A. Rep. 234.—Money.

172. The great nephews by the mother's side of a deceased Hindú, who died childless, were held to be entitled to share in his moveable estate, on the death of his widow.[1] *Mt. Umroot* v. *Kulyandas.* 5th July 1820. 1. Borr. 284. — Elphinston, Colville, Bell, & Prendergast.

173. Where a Hindú woman of Behar, who had inherited the entire estate of her father, died, leaving a sister's son's sons and a daughter; it was held, that the former succeed, and that *per capita*, and not *per stirpes.*[2] *Sheo Sehai Singh and others* v. *Mt. Omed Konwur.* 17th Aug. 1840. 6 S. D. A. Rep. 301.—Biscoe & Tucker.

9. *Of other Heirs.*

174. An uncle succeeds on failure of nearer heirs.[3] *Gudadhur Serma* v. *Ajodhearam Chowdry.* 30th Oct. 1794. 1 S. D. A. Rep. 6.—Sir J. Shore, Speke, & Cowper.

175. A *Zamíndárí* had gone to the eldest sons of a Hindú family successively, but after the great grandson, male issue failing, it went to his widow, on whose death the defendants, two cousins-german of her husband, took possession. At the suit of a descendant of the second son of the great-grandfather, it was held, that, at the death of the great-grandson's widow, the cousins-german, as his nearest relations, had the right to succeed.[4] *Beemla Dibeh* v. *Goculnath and another.* 2d Jan. 1800. 1 S. D. A. Rep. 29.—Cowper.

176. At the decease of a widow who took her husband's estate, the grandson of the full brother of the husband's grandfather, as a collateral kinsman, is entitled to the estate; and he dying before the suit was decided, a decree was passed in favour of his daughter as his heir. *Mt. Mahoda* v. *Mt. Kulleani and others.* 14th March 1803. 1 S. D. A. Rep. 62.—H. Colebrooke & Harington.

177. According to the law as current in Mithila, claimants to inheritance as far as the seventh, and even the fourteenth in descent in the male line from a common ancestor, are preferable to the cousin by the mother's side of the deceased proprietor. *Gungadutt Jha* v. *Sreenarain Rai and another.* 24th April 1812. 2 S. D. A. Rep. 11.—Harington & Stuart.

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point, however, was not ruled by the decision, as there was a son existing of the sister at the time of his maternal uncle's death. The majority of authorities and precedents are in favour of the right of succession to ancestral property of a sister's son, alive at the time of his maternal uncle's death, to the exclusion of the paternal uncles of the latter. Whether the right of succession of other existing heirs can remain in abeyance in the case of a childless sister, as trustee for future issue, is still doubtful.

[1] Mit. c. ii. s. v. vi.

[2] There is no doubt that the sister's son's sons were very distant indeed in the order of succession, and, in fact, are not included among the heirs by almost the whole of the law authorities. As, however, under no circumstances can a daughter succeed to ancestral property inherited by her mother, the Court considered, under the *Vyavashtas* of the Pandits, that the plaintiffs had the better right to the property of the common ancestor. The Pandit relied upon the authority of a text of *Vishnu*: "If a person die, leaving no nearer heir than his daughter's son, after him his daughter's son's son should perform the funeral obsequies of the deceased;" but he did not state where this text was cited.

[3] Dáya Bh. c. xi. s. vi. 5. 8, 9. Dáya Cr. San. c. i. s. x. 5. Mit. c. ii. s. v. 4.

[4] The estate having passed through three generations of the eldest branch, and remained in that branch during a period of a hundred years, was considered to be a separate estate in the hands of the widow of the last possessor, and not held for the behoof of the descendants of the younger branches of the family as co-heirs. On failure of the elder branch, the estate would regularly pass, after the death of the widow of the last possessor, to the heirs of her husband, and those were his uncle's sons, in preference to the grandsons of his great uncle (Dáya Bh. c. xi. s. vi. 9. and recapitulation by *Srikrishna*, inserted at the close of that section). Had the appellant's son been entitled to share in the succession, his title could not have been defeated by the act of the widow admitting the respondents to a participation in the *Zamíndárí* without his consent.—Coleb.

178. By the law in force in Mithila, the right of succession vests in the descendants in the paternal line, in preference to those of the maternal line; and such law being held to continue to regulate the succession to property in a family who had migrated from that district, but had retained the religious observances and ceremonies of Mithila, it was held that descendants in the paternal line in the sixth degree were preferable to one claiming as the cousin on the mother's side. *Rutcheputty Dutt Jha and others* v. *Rajunder Narain Rae and another.* 12th Feb. 1839. 2 Moore Ind. App. 132.

179. According to the law as current in Bengal, the son of the deceased's maternal uncle (who is also a *Bandhu* or cognate), takes the inheritance in preference to lineal descendants from a common ancestor beyond the third in ascent.[1] *Roopchurn Mohapater* v. *Anundlal Khan.* 1st Sept. 1812. 2 S. D. A. Rep. 35. —Harington & Fombelle.

180. The great grandsons of the paternal uncle of a deceased Hindú were held to be entitled to his immoveable property, to the exclusion of his great nephews by the mother's side. *Mt. Umroot* v. *Kulyandas.* 5th July 1820. 1 Borr. 284.—Elphinston, Colville, Bell, & Prendergast.

181. Property devolving on a woman from her father will go to her father's brother's son, in default of nearer heirs, to the exclusion of a son adopted by her with her husband's permission.[2] *Gunga Mya* v. *Kishen Kishore Chowdry.* 17th Dec. 1821. 3 S. D. A. Rep. 128.—Goad & Dorin.

182. In a case of disputed adoption, where the son of the alleged adopted son had held possession of the estate until his death, leaving a childless widow, who also died, the adoption being considered by the Court to be unsubstantiated, it was decreed that the estate should go to the descendants of the brothers of the father of the alleged adoptive grandfather, the intermediate heirs having failed, to the exclusion of the sons of his daughters. *Baboo Girwurdharee Sing* v. *Kulahul Sing and others,* and *Keerut Sing* v. *Baboo Girwurdharee Sing.* 19th Jan. 1825. 4 S. D. A. Rep. 9.—C. Smith.

183. The reversionary heirs to an estate of a sonless Hindú (vacated by the widow's death) are his heirs surviving at his widow's decease; so that of several kinsmen of equal degree who would have jointly succeeded, but for the widow, if any die in the interim between the deaths of the husband and widow, their heirs are excluded. *Laxmi Narayan Singh and another* v. *Tulsi Narayan Singh and others.* 9th April 1833. 5 S. D. A. Rep. 282.—Rattray & Walpole.

184. By the law as current in Bengal, the son of the deceased's maternal aunt takes the inheritance, in preference to lineal descendants from a common ancestor beyond the third in ascent. *Deyanath Roy and another* v. *Muthoor Nath Ghose.* 14th April 1835. 6 S. D. A. Rep. 27.—H. Shakespear.

185. In the case of a married woman dying possessed of ancestral property, the daughter's son of her paternal great-grandfather, from whom the property descended to her, will succeed in default of other heirs.[3] *Gosaien Chund Kobraj* v. *Mt. Kishenmunnee and another.* 8th July 1836. 6 S. D. A. Rep. 77.—Halhed.

186. But in the event of the woman having outlived such daughter's son, the son of the latter will not inherit. *Ib.*

187. The daughter of a paternal

[1] Dáya Bh. c. xi. s. vi 20., and *Srikrishna's* note to s. vi. Mit. c. ii. s. vii. 1.

[2] An adopted son has no claim to the property of a *Bandhu*; and though he succeeds collaterally, the meaning is, succession to the property of persons belonging to the same family as the adoptive father.

[3] Dáya Cr. San. c. i. s. x. 12.

uncle will not inherit property left by a woman, which she had inherited from her father; but such property will go to her father's heirs, should any such be in existence, in succession, according to the law of inheritance. *Ib.*

187 *a.* Where *A* and *B*, the son's sons of the great-grandfather of *C* by a first and second wife, claimed the estate of *C* at his decease, against *D*, the widow of the elder brother of *C* (whom *C* had succeeded), his sisters, and their sons; it was held, that, according to the law as current in Mithila, *A* and *B* were entitled to the inheritance. *Rany Pudmavati* v. *Baboo Doolar Sing and others.* 30th June 1847. MS. Notes of P. C. Cases.

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10. *Of Pupils*[1], &c.

188. Where *A* claimed from *B* a moiety of property possessed by a late *Mohant*, judgment was given in *B*'s favour, on proof that he had been appointed by the late *Mohant* as his principal pupil, and had been installed as his successor at the celebration of his obsequies.[2] *Dhun Sing Gir* v. *Mya Gir.* 15th Aug. 1806. 1 S. D. A. Rep. 153.—H. Colebrooke & Fombelle.

189. *A* and *B*, two *Chílás* of a deceased *Mohant*, claimed certain *Lákhiráj* lands which had belonged to him, each alleging that he had been appointed by the late *Mohant* as his successor. *A* produced a *Sanad* from a *Zamíndár* acknowledging him as the successor for the part of the establishment situated in his *Zamíndárí*, and a corresponding *Perwánch* from the Collector of the district; but judgment was given in favour of *B* on his proving that the late *Mohant* had, previous to his decease, nominated him as his successor to the office, and the lands attached to it, publicly in the presence of his pupils and the order; and that after his decease *B* had been declared his successor, and duly installed in office after the accustomed ceremonies, by the principal persons of the order, the pupils of the deceased, and the *Mohants* of the surrounding district. *Ramrutun Das* v. *Bunmalee Das.* 15th Dec. 1806. 1 S. D. A. Rep. 170.—H. Colebrooke & Fombelle.

190. On a claim by a *Sannyási* to the succession to a deceased *Mohant*, it appearing that the claimant was principal pupil of the deceased (but was not nominated as his successor), and was installed as his successor at the obsequies by an assembly of *Mohants*, judgment was given in his favour.[3] *Gunes Gir* v. *Amrao Gir.* 9th Nov. 1807. 1 S. D. A. Rep. 218. —H. Colebrooke & Fombelle.

191. The successor to a *Guru* or spiritual teacher in his rights and possessions, must, by the law of the religious order of *Sannyásis*, or *Gosáyens*, be a *Chílá*, or pupil of the deceased.[4] *Ib.*

192. A suit by a *Chílá* of a *Sravuk Guru* to obtain possession of the temple of his sect at Surat, in quality of heir to the last *Guru*, was dismissed, because the *Seth*, or chief of the sect at Ahmadabad, was possessed of the

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[1] See Dáya Bh. c. xi. s. i. 15. s. vi. 24. Mit. c. ii. s. viii. 1 Str. H. L. 148. 1 Macn. Princ. H. L. 34. 3 Coleb. Dig. 546.

[2] According to the established usage of the religious order of *Gosáyens* or *Sannyásis*, the installation of *B* as *Mohant* by the assembly of neighbouring *Mohants* at the obsequies of the deceased was conclusive. The several Courts gave no credit to a certain special engagement, alleged by *A* to have been executed in his favour by the late *Mohant*; and maintained, by the decree in the cause, the regular election of *B*, in conformity with the usage of the order See Steele, App. B. 66.

[3] The present decision establishes a precedent where no successor has been nominated; and it may be considered the ascertained rule in such cases that "the proper successor to a *Mohant* is his *Khás-chilá*, or principal pupil;" though from the result of former inquiries (in the two preceding cases) the election and installation of the successor by an assembly of *Mohants* at the obsequies of the deceased *Mohant* appears to be, in all cases, indispensable and conclusive.—Coleb. Steele, App. B. 66.

[4] Steele, 72.

sole power of appointing a *Guru*, and had already nominated another person. At the same time the Court held, that if the *Chílá* could establish his right at Ahmadabad, and bring a certificate to that effect from the *Mahájuns* of that city, he should be put in possession of the *Upasura*, and confirmed in all the rights and privileges of the office at Surat. *Bhutaruk Rajindru Sagur Sooryu* v. *Sook Saqur and another*. 7th March 1809. 1 Borr. 351.—Grant & J. Smith.

193. In a suit for a *Mohantí*, on the ground that the plaintiff was the successor appointed by the last incumbent, and afterwards regularly installed, the case was not made out, and the claim dismissed. But the defendant in possession of the endowed lands not having been regularly elected or installed after the death of the last *Mohant*, as required by the usage of the sect, the Court directed that an assembly of *Mohants* should be convened to elect and instal the defendant, if entitled, or any other person in whom the title might be vested. *Gunga Das and another* v. *Tiluk Das*. 26th Nov. 1810. 1 S. D. A. Rep. 309.—Harington.

194. One of six *Chílás* of a *Bairágí Guru* having alienated a *Mandír* without the consent of the others, such alienation was declared to be illegal under an award of arbitration, as among the *Bairágís* it is an unalterable rule that the *Chílás* are joint heirs to the *Mandír*, and have an equal interest in it. *Gopaldas Kishundas* v. *Damodhur Chela and another*. 8th Dec. 1812. 1 Borr. 397. —Crow & Day.

195. The nephew of a deceased *Brahmacharí* was appointed to succeed him in the *Gaddí* of a religious endowment, on proof of his title being superior to that of the person in possession (the *Chílá* of the late incumbent), the evidence adduced shewing that the last incumbent had intended him to be his successor in the office, and that the *Chílá* had usurped the *Gaddí* of the late *Brahmacharí*, with the aid of certain ill-disposed persons, during the absence of the nephew, the rightful successor. *Sheoram Brahmacharee* v. *Subsookh Brahmacharee*. 24th May 1824. 3 S. D. A. Rep. 358.—C. Smith & Ahmuty.

196. A claim for the office of presiding *Mohant* of a temple at Juggurnath was decided in favour of the plaintiff, on the grounds of his having been the principal *Chílá* of the late *Mohant*, of his having been nominated by the latter to the succession, and of the nomination having been adhered to by the appointing *Mohant*, during the latter years of his life, against the claim of the defendant, who had been previously nominated to the succession by the same party, and who pleaded a deed of gift in his favour of the temple and its appendages. *Mohunt Rama Nooj Doss* v. *Mohunt Debraj Doss*. 17th June 1839. 6 S. D. A. Rep. 262.—Money & Tucker.

197. A *Bairágí* is not necessarily such a religious devotee that his goods are inherited by his pupil in the event of intestacy. *Govind Doss* v. *Ramsahoy Jemadar and others*. 3d Aug. 1843. 1 Fulton, 217.

198. Semble, The goods of a *Yatí* are inherited by his *Shishya*, and not by his *Chílá*.[1] *Ib.*

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11. *By Custom.*

199. In cases of inheritance, according to the Hindú law, in order to legalise any deviation from the strict letter of the law, it is necessary that the usage authorising such deviation should have been prevalent during a long succession of ancestors in the family, when it becomes known by the name of *Kulachar*, and has the prescriptive force of law.[2] *Sumrun Singh and others* v. *Khedun Singh and another*. 27th June 1814. 2 S. D. A. Rep. 116.—Harington & Fombelle.

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[1] 2 Str. H. L. 248.

[2] Menu, B. i. v. 108, 109. B viii. v. 3. 41 46 1 Coleb Dig. 95. 1 Str H L. 251

200. Semble, The son of a Rajput by a woman of the Dhanuk tribe would have been held entitled to the inheritance on the ground of usage, notwithstanding his illegitimacy, if he could have proved his allegation that both his father and grandfather, who had inherited the property, were sons of Rajputs by Dhanuk women. *Pershad Singh* v. *Ranee Muheshree.* 17th Dec. 1821. 3 S. D. A. Rep. 132.—Goad & Dorin.

201. The Bengal law of inheritance was held to be applicable where a family had migrated from Mithila, had resided for generations in Bengal, had intermarried with Bengal women, and had not uniformly observed the religious ordinances of Mithila. *Rajchunder Naraen Chowdry* v. *Gocalchund Goh.* 22d June 1801. 1 S. D. A. Rep. 43.—Lumsden & Harington.

202. But subsequently, claimants to an inheritance, who had migrated from Mithila, and had retained the religious observances and ceremonies of their native district, were held to be entitled to the benefit of the laws of Mithila. *Gungadutt Jha* v. *Sreenaraen Rai and another.* 24th April 1812. 2 S. D. A. Rep. 11.—Harington & Stuart.

203. And the same point was decided by the Judicial Committee of the Privy Council in *Rutcheputty Dutt Jha and others* v. *Rajunder Narain Rae and another.* 12th Feb. 1839. 2 Moore Ind. App. 132.

203 *a*. Where a family of Bengálí Súdra Sudgops had migrated to Mithila at a remote period, and it was proved by the evidence that they had adopted the laws and customs of Mithila, the Mithila law of Inheritance was held to be applicable. *Rany Pudmavati* v. *Baboo Doolar Sing and others.* 30th June 1847. MS. notes of P. C. cases.

203 *b*. A family of Sudgop Brahmans, who had, many years previously to the institution of the original suit, migrated to Midnapore, were, upon proof that they had retained their laws and religious observances, held to be entitled to the benefit of the Bengal laws of inheritance. *Rany Srimuty Dibeah* v. *Rany Koond Lutta and others.* Dec. 1847. MS. notes of P. C. cases.

204. Where a custom was alleged in abrogation of the law of inheritance, and the prevalence of such custom was not clearly established by the evidence, the Pandits declared that both the custom and the law were equally valid, but in their opinion the disposition under the law was the best; and the Court decreed (chiefly on a verbal report from the law officers, that the Cast had long tried to accommodate matters between the parties) that the property in dispute should follow the law of inheritance. *Gunga* v. *Jeevee.* 18th Nov. 1811. 1 Borr. 384.—Crow & Day.

205. A claim to an estate, on a plea of family usage, whereby a brother succeeds to a brother, to the prejudice of surviving sons, was disallowed, on proof that such was not the family usage. *Pertaub Deb* v. *Surrup Deb Raikut.* 19th Jan. 1818. 2 S. D. A. Rep. 249.—Ker.

206. Where, by the established usage of any particular country or province, the right of succession may be preserved to illegitimate children, as well as to those born in wedlock or adopted, such usage is to be adhered to. *Mohun Singh* v. *Chumun Rai.* 20th Nov. 1799. 1 S. D. A. Rep. 28.—Speke & Cowper.

207. Where a widow claimed a moiety of the estate of her late husband as his heir, from her husband's brother, her claim was dismissed on proof that he had succeeded to the whole estate (previous to the grant of the Dewanny) under a custom, by which it always devolved entire to one heir. *Mt. Mahamaya Dibeh* v. *Goureekaunt Chowdry.* 23d May 1808. 1 S. D. A. Rep. 236.

208. In a suit against the son of

the late Rajah of Tipperah for the succession to the Tipperah *Zamíndárí*, there being proof that, by the usage of the family, the person appointed *Jobráj* is successor to the *Zamíndárí*, in preference to the next of kin, such usage was upheld by the Court, and judgment given accordingly.[1] *Ramgunga Deo* v. *Doorgamunee Jobraj*. 24th March 1809. 1 S. D. A. Rep. 270.—Harington & Fombelle.

209. By the special usage of the principal *Zamíndárí* in the district of Tipperah, the person appointed *Jobráj* takes the inheritance, in preference to the next of kin; and the person appointed *Burrá Thákur* is considered next to him in succession, and takes the inheritance in his default, as well as on his death, provided the *Jobráj*, after becoming Rajah, has not nominated another person to be his *Jobráj*. *Urjun Manic Thakoor and others* v. *Ramgunga Deo*. 24th March 1815. 2 S. D. A. Rep. 139.—Harington. *Ranee Soomitra* v. *Ramgunga Manik*. 26th July 1820. 3 Do. 40.—C. Smith.

210. A claim by the uncle of the respondent to a share of an hereditary estate which had, prior to Reg. XI. of 1793, devolved entire on the respondent in right of primogeniture, agreeably to a custom of the family, was rejected, although the estate was not of the nature described in Reg. X. of 1800[2]; and it was held, that on the death of the present possessor the property should be distributed according to the law of inheritance amongst the respondent's children, but not retrospectively, so as to benefit his uncle, the original claimant, or his uncle's sons, the present appellants. *Jugunnath* v. *Rughoonath Das*. 1st March 1824. 3 S. D. A. Rep. 311.—C. Smith.

211. Where it appeared on evidence that the estate of a Hindú deceased had not invariably devolved entire on the chief heir, but had been taken by the most competent, and had been occasionally held by several heirs conjointly, the Court considered it to be divisible among the heirs according to the Hindú law of inheritance, and decreed partition of the estate in opposition to the claim of one heir to hold the same as an individual estate. *Baboo Girwurdharee Sing* v. *Kulahul Sing and others*. 19th Jan. 1825. 4 S. D. A. Rep. 9. —C. Smith.

213. This decision was confirmed on appeal by the Judicial Committee of the Privy Council. *Ghirdharee Sing* v. *Koolahul Sing*. 8th Dec. 1840. 2 Moore Ind. App. 344.

214. Where, in a disputed claim for a *Zamíndárí* in the Jungle Maháll, it appeared on the evidence that it was an estate that, by the family custom, had always been held by the chief male heir, the remaining heirs receiving only food and raiment, and that it never had been taken by a female; it was held that the brother of the deceased childless Rajah should take his estate, to the exclusion of his widows. *The Widows of Rajah Zorawur Sing* v. *Koonwur Pertee Sing*. 21st April 1825. 4 S. D. A Rep. 57.—Harington & Martin.

215. If an estate has not invariably devolved entire to the chief heir, but has been occasionally held by several heirs conjointly, the plea of family usage in bar of a partition cannot be maintained. *Rajah Sooranany Venkatapetty Rao* v, *Rajah Sooranany Ramachendra Rao*.[3] Case 1 of 1825. 1 Mad. Dec. 495.—Grant, Cochrane, & Oliver.

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[1] 1 Str H. L. 198.

[2] The former of these two Regulations was rescinded, as respects the Jungle Mahalls of Midnapore and other districts, by the latter. The preamble of Reg. X. of 1800 declares the Regulation to be in force in all Bengal, Behar, and Orissa, but the Judicial Committee of the Privy Council ruled that it could only apply in Midnapore.

[3] From the decree of the Sudder Adawlut in this case an appeal was preferred to the Privy Council, but the appeal terminated in a *Rázi námeh* being filed by the parties.

216. Where the nephew of a deceased Hindú and his father's widow claimed a moiety of his uncle's estate from his cousin, who had possessed himself of the whole property, he was nonsuited, it being proved that the estate had always devolved on the eldest son or nearest heir of the deceased proprietor, his other heirs being only entitled to food and raiment from the estate. *Mt. Mahranee and another* v. *Benee Pershad Rai.* 3d May 1825. 4 S. D. A. Rep. 62.—C. Smith & H. Shakespear.

217. Where, by the usage of the country and family of parties claiming certain prerogatives and property, it was customary that such should vest in the senior male of a particular branch of the family; it was held that a testamentary disposition in favour of any other member of the family, was void and of no effect. *Malosherry Kowilagom Rama Wurma Rajah* v. *Mootherakal Kowilagom Rama Warma Rajah.* Case 5 of 1825. 1 Mad. Dec. 509.—Grant, Cochrane, & Oliver.

218. Held, that a *Ghatwáli Maháll* in Zillah Beerbhoom, with reference to the usual practice and the meaning and intent of the term *Ghatwál*, is not divisible, on the death of a *Ghatwál*, among his heirs, but should devolve entire on the eldest son, or the next *Ghatwál.*[1] *Hurlal Singh* v. *Jorawun Singh.* 19th June 1837. 6 S. A. Rep. 169.—Rattray & F. C. Smith.

219. Semble, Among the Jumboo Brahmans, if a man die leaving a daughter and no male issue, the daughter and her daughter would inherit his property, even when undivided, and not his cousins or collateral relatives, who could only succeed on failure of all other heirs; as it is the custom of the Cast for women to succeed, whether the family be divided or undivided. *Dessaees Hurreeshunkur and Roopshunkur* v. *Baees Manhoovur and Umba.* 6th Sept. 1838. Sel. Rep. 122.—Giberne, Payne, & Greenhill.

220. Agreeably to the family usage, the succession by primogeniture to an estate in Chota Nagpore (under the Agent to the Governor-General for Hazárí-Bágh) was upheld against a claim for division of the ancestral estate. *Thakoorai Chutturdharee Singh* v. *Thakoorai Telukdharee Singh.* 22d May 1839. 6 S. D. A. Rep. 260.—Money & Tucker.

221. By the usage of the *Zamíndárs* of Pachete, the eldest son was held to be entitled to succeed to the *Ráj*, the other sons, as well as the minor branches of the family, being only entitled to maintenance. *Maharajah Gurunarain Deo* v. *Unund Lal Singh.* 24th Feb. 1840. 6 S. D. A. Rep. 282.—Rattray & Lee Warner.

222. In the case of an estate in Manbhoom, in the jurisdiction of the Governor-General's Agent at Hazárí-Bágh; it was held, according to the usage of the family, that the succession vested in the eldest son of the deceased Rajah, born of any of his wives, in preference to the eldest son of his *Paát* or first Rání. *Rajah Rughonath Sing* v. *Rajah Hurrehur Singh.* 8th June 1843. 7 S. D. A. Rep. 126.—Tucker & Reid. (Barlow dissent.)

223. Where a party sued to recover the *Ráj* of one of the tributary *Mahálls* of Cuttack, as the son and heir of the late possessor, his claim was dismissed on the ground that his mother being a kept mistress, and never having resided in the *Maháll Sarái*, he was not entitled to succeed, according to the local and family usage. *Rajah Jenardhun Ummur Sing Mahendar* v. *Obhay Sing.* 2d Sept. 1835. 6 S. D. A. Rep. 42.—Robertson & H. Shakespear.

224. The plaintiff sued to obtain possession of the *Ráj* of one of the tributary *Mahálls* in Cuttack, as heir to the late Rajah. Held, on proof

[1] But it seems that though the eldest son will succeed to the *Ghatwáli* lands, to the exclusion of the others, the latter are entitled to maintenance, if they choose to stay and perform a *Ghatwál's* duty.

that the plaintiff was the son of the late Rajah by a slave girl, he could not, as such, succeed to the *Ráj* according to the established usage. *Bulbhuddur Bhourbhur* v. *Rajah Juggernath Sree Chundun Mahapatur.* 29th July 1840. 6 S. D. A. Rep. 296.—Biscoe.

12. *To Woman's Property.*[1]

225. Property given by a Hindú to his daughter on the occasion of her marriage is *Stridhana*, and passes to her daughter at her death. At the daughter's death it passes to the heir of the daughter, like other property; and in this case the mother's brother was decided to be heir, in preference to a daughter who was a widow without issue.[2] *Prankishen Singh* v. *Mt. Bhagwutee.* 25th April 1793. 1 S. D. A. Rep. 3.—Lord Cornwallis, Speke, Cowper, & Graham.

226. According to the law as current in Bengal, the son of a maternal uncle of a woman is not heir to her peculiar property.[3] *Sreenarain Rai* v. *Bhya Jha.* 27th July 1812. 2 S. D. A. Rep. 23.—Harington & Stuart.

227. Property derived by a widow from her father was decided to pass to her own sister after her death, and not to the sister of her late husband[4]: and nieces, daughters of the sister of the widow, were held to be entitled to the property as her nearest relations and legal heirs, being descended in a direct line from her father, in preference to the grandson of the deceased husband's sister. *Juggunauth Rughoonathdas* v. *Sheo Shunkur Jussoomul.* 14th Feb. 1814. 1 Borr. 91.—Sir E. Nepean, Brown, & Elphinston.

228. Where a Hindú by his will left his wife a certain legacy, and she afterwards was burned on her husband's funeral pile; it was held that she was not constructively supposed to die with him, that the legacy should go to her daughters, and that it should not make part of the residue of the husband's estate. *Debnath Sandial* v. *Maitland.* March 1820. Macn. Cons. H. L. 371.

229. Where the claimants to a woman's *Sudayica Stridhana* are the son of the daughter's son of her paternal great-grandfather, and the son of a contemporary wife, the latter will inherit.[5] *Gosaien Chund Ko-*

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[1] For the customs regulating *Stridhana*, prevailing among different Casts, see Steele, 235.

[2] The property having been given to the daughter by her father on the occasion of her marriage, was undoubtedly her *Stridhana* (Dáya Bh. c. iv. s. i.), and should have devolved, upon her death, on her daughter, whether unmarried, married, or a widow (Ibid. s. ii. 9. 12. 22.). But on the death of that daughter, the land being, in respect of her, an inheritance, and not the peculiar property termed *Stridhana*, it would not pass to her daughter, being a childless widow (Ibid. c. xi. s. ii. 3.), but to the next nearest heir. This appears to be the ground of the opinion delivered by the Pandit in this case, and it supposes the childless widow to have been so at the time of her mother's decease; for if she had then been unmarried, or if her husband had been living, she would have succeeded to her mother's property, of every sort, in preference to the mother's brother or his son (Ibid. c. xi. s. ii.), who could only have come in after her decease (Ibid. c. xi. s. ii. 30.).—Coleb.

[3] For the order of succession to woman's separate property, see *Srikrishna's* Summary, at the end of c. iv. of the Dáya Bh. 1 Str. H. L. 248. 2 Do. 411, 412. 1 Macn. Princ. H. L. 37. 3 Coleb. Dig. 587. Mit. c. ii. s. xi. Steele, 73. Macn. Cons. H. L. 238. Dáya Cr. San. 45. 53. May. c. iv. s. x. 13 *et seq.*

[4] 1 Str. H. L. 248. 1 Macn. Princ. H. L. 38. Mit. c. ii. s. xi. 2. By the authorities of the Eastern school, wealth devolving on a woman by inheritance is not classed as "woman's property." Dáya Bh. c. iv. c. xi. s. i. 8. In this case it appears that, according to the law current in the West, the property was considered as *Stridhana.*

[5] The text cited by the Pandit (Dáya Cr. San. c. ii. s. 3.) as the authority for the above doctrine, relates to *Stridhana* left by a married woman, not given to her by her father, and not given to her at the time of her nuptials. Had the property of the deceased woman been ancestral instead of *Stridhana*, the daughter's son of her paternal great-grandfather, from whom the property descended to her, would succeed in default of other heirs. But in the event of the woman having outlived such daughter's son, the son of the latter would not inherit.

braj v. *Mt. Kishenmunee and another*. 8th July 1836. 6 S. D. A. Rep. 77.—Halhed.

13. *To Offices.*

230. Lands endowed for religious purposes are not hereditable: the management alone devolves on the heirs of the person who made the endowment.[1] *Elder Widow of Rajah Chutter Sein* v. *Younger Widow of Same*. 15th April 1807. 1 S. D. A. Rep. 180.—H. Colebrooke & Harington.

231. Held, that a claim to *Sasunbirt*, or fee received under a *Sasun*, or patent, including the exclusive privilege of performing, or causing to be performed, within certain limits prescribed by the grant of the Rajah, the ceremony of burning the dead, and of receiving the usual compensation paid for such service, is maintainable, notwithstanding the abolition of the *Sáyir* duties. The authorised hereditary privilege to which this perquisite was annexed, having the sanction of established custom, and of the Hindú law, which recognizes the grant of a Rajah in this and similar instances, the Court deemed it a legal private right fit to be sustained.[2] *Kalachund Chukurbuttee* v. *Joogut Chukurbuttee*. 2d June 1809. 1 S. D. A. Rep. 279.—Harington & Stuart.

232. *A*, a Hindú, dedicates certain land to the Deity and the maintenance of an idol, and by his will appoints his second son the manager of it; all the rest of his property the testator devises to his three sons, in the following proportions: five-sixteenths to the eldest son, six-sixteenths to the second son, and five-sixteenths to the third son. On the death of the appointed manager, no provision being made in the will for a successor: it was held, in conformity with the opinions of the Pandits, that the right of management descended to the several heirs of the three sons (two of whom had died in the lifetime of their ancestor), to be enjoyed by them according to the general proportions established by the will for the rest of the inheritance, and not in equal proportions according to the common Hindú law.[4] The Pandits also said that the sons of the appointed manager should have the first turn of management (which in fact they had taken under a claim of a continuing right); and it was decreed, that after a corresponding term of enjoyment by each of the other branches, according to their respective proportions, the future enjoyment might be regulated according to the convenience of the parties. *Nubkissen Mitter and others* v. *Hurrischunder Mitter and another*, and *vice versâ*. 11th April 1818. East's Notes. Case 82.

233. The office of *Karnam* is hereditary, and cannot be transferred by a deed of gift. *Diggavelly Parummah* v. *Coontamoohala Surrauze*. Case 1 of 1819. 1 Mad. Dec. 214.—Harris & Cherry.

233 *a*. Where *A* claimed the *Zuhat Sur Patélhi* of a village against *B*,

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[1] 1 Str. H. L. 151. 210. 2 Do. 369.

[2] This decision is important in its principle, which admits the validity, under the Regulations in force, of the grant of an exclusive privilege for the performance of the rites and ceremonies of the Hindú religion, when conformable to established usage, and sanctioned by the Hindú law. The fees arising from the privilege, confirmed in the present instance, however, were understood to be voluntary, and the precedent must be received with circumspection, as, in the preamble to Reg. XXVII. of 1793, one of the beneficial consequences expected from depriving the landholders of the power of imposing and collecting duties is stated to have been "the suppression of many petty monopolies and exclusive privileges, which had been secretly continued, to the great prejudice of the lower orders of the people."—Coleb.

[3] The Court expressed some doubt at the time concerning the opinion of the Pandits on this point, but it was never mentioned again in Court; and as the parties appeared to have been finally satisfied as to the mode of managing the idol in future, the decree was framed accordingly on the basis of the *Vyavashta*.

resting his title on inheritance, *B* was confirmed in the office on the ground of long possession and an acknowledgment of her title by the Native Government previous to the territory having come into the hands of the East-India Company. *Madhowrao Joshee Chashur* v. *Yuswuda Baee.* 11th Jan. 1823. 2 Borr. 420.—Romer.

234. *A* sued for an injunction to compel *B*'s resignation of a claim to the office of *Dallál*, or Agent of *Banjáras.* *A* proved that his ancestors had enjoyed the office, and had always paid the *Nuzurana* to Government; and that although *B* had acted in the situation, he had done so in *A*'s name, and by his permission; and the injunction was therefore granted. *Govind Nana Bhaee* v. *Govind Ruseek.* 21st May 1823. 2 Borr. 537.—Ironside.

235. The office of *Khót* of a village was held to be hereditary. *Apajee Narayun Tere Dessaee* v. *Naroo Trimbuk Joovekur.* 5th Feb. 1824. 2 Borr. 543.—Romer, Sutherland, & Ironside. *Hunmuntrao Junárdhun* v. *Sullowdin and another.* 30th Jan. 1839. Sel. Rep. 144.—Pyne, Greenhill, & Le Geyt.

236. The offices of *Majmúahdar*, *Parek*, and *Mehta* of a *Pergunnah* in the Bombay Presidency were held to be hereditary, and not to cease upon a grant by the Government of a village in *Jágír* or *Inaám* tenure. *Beema Shunkur and others* v. *Jamasjee Shaporjee and others.* 9th Dec. 1837. 2 Moore Ind. App. 23.

236*a*. A claim to the hereditary office of headship of the butchers in the town of Ahmednuggur was dismissed, no satisfactory proof being shewn of the right to inherit, and adverse possession of the office being had for more than thirty years. *Babun Wullad Raja Katik* v. *Davood Wullad Nunnoo.* 24th Feb. 1841. 2 Moore Ind. App. 479.

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14. *Exclusion from Inheritance.*

237. A son adopted into another family is excluded from inheriting in the family of his natural father. *Srinath Serma* v. *Radhakaunt.* 24th Nov. 1796. 1 S. D. A. Rep. 15.—Speke & Cowper. *Duttnaraen Sing* v. *Ajeet Sing.* 14th Feb. 1799. 1 S. D. A. Rep. 20.—Cowper. *Ranee Bhuwani Dibeh* v. *Ranee Sooruj Munee.* 12th May 1806. 1 S. D. A. Rep. 135.—Harington & Fombelle.

238. A Hindú having adopted a son cannot disinherit such son by will.[2] *Gopeymohun Deb* v. *Raja Raykissen.* *Circa* 1800–1801. Cited in East's Notes. Case 75. Macn. Cons. H. L. 230.

238*a*. Semble, An adopting father cannot disinherit a son properly adopted, even for bad behaviour. *Daee* v. *Motee Nuthoo.* 6th Oct. 1813. 1 Borr. 75.—Nepean, Brown, & Elphinston.

239. Members of a Hindú family, entitled as heirs to shares of the family estate, of which shares, however, during sixteen years, they never demanded separate possession, but allowed them to remain, with other parts of the estate, under the general controul and management of another of the sharers (a member of the family), and received a provision in land for their expenses, are not debarred from claiming possession of the shares, it not appearing that they ever consented to relinquish their right as sharers. *Ranee Bhuwani Dibeh and another* v. *Ranee Sooruj Munee.* 12th May 1806. 1 S. D. A. Rep. 135.—Harington & Fombelle.

240. Impediments to hereditary succession are twofold; the first temporary, and removeable by expiation;

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[1] This is in conformity to the law as received with relation to a *Dattaka* adoption (Menu, B. ix. v. 142. Macn. Cons. H. L. 128.): it would be otherwise if the adoption were in the *Kritrima* form. See *supra*, p 308, note 1

[2] Macn. Cons. H. L. 228, 229. 356.

the second perpetual. Offences involving an irrevocable exclusion from Cast belong to the latter class.[1] *Sheonauth Rai* v. *Mt. Dayamyee Chowdrain.* 17th March 1814. 2 S. D. A. Rep. 108.—Rees.

241. A father partially disinherited his son for misconduct[2], by will, and the said will was upheld by the Court. *Mihirwanjee Ruttunjee* v. *Poonjeea Bhaee and another.* 19th May 1815. 1 Borr. 144.—Nepean, Brown, Elphinston, & Bell.

242. Per East, C. J. Dedication to the Deity by will is no disposition of the property[3]; and many cases have determined that it is no objection to an heir-at-law taking an undisposed residue, though a specific legacy be given to him by the will. *Sree Muttee Berjessory* v. *Ramconny Dutt and another.* 26th July 1816. East's Notes. Case 54.

243. A Hindú widow afflicted with blindness has no right to claim her late husband's estate, as her blindness is a complete disqualification.[4] *Daee* v. *Poorshotum Gopal.* 13th March 1818. 1 Borr. 411.—Elphinston & Sutherland.

244. If a man or woman be blind or deaf[5], such gets no share of his or her father's property, but the other co-parceners are bound to maintain him or her. If, however, after division, the defect be removed, he or she will receive a share; and again, if either misfortune should fall on him or her after separation, the share received by him or her does not revert to the other sharers. *Ruvee Bhudr Sheo Bhudr* v. *Roopshunker Shunkerjee.* 13th May 1824. 2 Borr. 656. —Romer, Sutherland, & Ironside.

245. A brother's daughter's son, and a grandson of a daughter's son, are excluded from the inheritance, even if there be no other heirs.[6] *Ilias Coonwur* v. *Agund Rai.* 24th May 1820. 3 S. D. A. Rep. 37.—Fendall & Goad.

246. Held by the Judicial Committee of the Privy Council, that a widow does not forfeit her right of succession by removing from the house of her deceased husband's relations. *Cossinauth Bysack and another* v. *Hurrosoondery Dossee and another.* 24th June 1826. Cl. R. 1834. 91. Mor. 85.

247. The son of one of three brothers who had been joined, and one slain, in rebellion, sued for a third share of an estate, for which the deceased brother had been the contracting and, ostensibly, the sole owner, long after such estate had been confiscated, and bestowed by Government upon another person for services rendered. Held, that the right of inheritance was barred by the confiscation, as well as by long quiet possession of the grantee of Government. *Mahi-*

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[1] Menu, B. ix. v. 201. Dáya Bh. c. v. 3. Mit. c. ii. s. x. 1. 3 Coleb. Dig. 300 *et seq.* 1 Str. H. L. 159. 161. 2 Do. 269. According to *Devala*, the outcast is not even entitled to maintenance; and *Baudáyana* includes his issue. Dáya Bh. c. v. 11, 12. 3 Coleb. Dig. 304. 316. Steele, 67. *Yájnyawalcya*, however, enjoins the maintenance of the outcast, on the authority of *Menu*, and even maintains that the son may inherit. Dáya Bh. c. v. 10. 3 Coleb. Dig. 321, 322. The author of the Mitácshará also upholds the right of the outcast to maintenance, but *Bálambhatta*, in his Commentary, states that he is only entitled to it when his crime is expiable. Mit. c. ii. s. x. 5, and note. Steele, 224. App. A. 47.

[2] Menu, B. ix. v. 214. Dáya Bh. c. v. 6. 13. Mit. c. ii. s. x. 3. 3 Coleb. Dig. 303 *et seq.* 1 Str. H. L. 157. 159. Macn. Cons. H. L. 348. Steele, 67. 224, 225. With regard to the custom of various Casts, as to the power of a father to disinherit his son, see Steele, App. A. 48, 49.

[3] It must be observed, that lands properly assigned as an endowment for religious purposes are not inheritable at all as private property: the management of them alone, for religious purposes, devolves on the heirs of the person who made the endowment. 1 Str. H. L. 151. See RELIGIOUS ENDOWMENT, 7 *et seq.*

[4] Menu, B. ix. v. 201, 202. Dáya Bh. c. v. 7. 11. Mit. c. ii. s. x. 3 Coleb. Dig. 303, 304. 318. 1 Str. H. L. 152. Steele, 67. 224. App. A. 47.

[5] See p. 338, note 4.

[6] See *supra*, p. 321, note 2.

pat Singh v. *Collector of Benares and another.* 29th May 1830. 5 S. D. A. Rep. 32.—Turnbull.

247 *a.* The heirs entitled in reversion to the estate of a sonless Hindú, vacated by the death of his widow, and to which she succeeded, are the heirs surviving at her decease; so that, of the several kinsmen of equal degree (who would have jointly succeeded but for the widow), if any die in the interim between the death of the husband and widow, their heirs are excluded. *Laxmi Narayan Singh and another* v. *Tulsi Narayan Singh and others.* 9th April 1833. 5 S. D. A. Rep. 282. — Rattray & Walpole.

248. A leper is excluded from the inheritance.[1] *Ib.*

249. A son bought (*Krita*) does not take any share in the inheritance.[2] *Yachereddy Chinna Bassapa and others* v. *Yachereddy Gowdapa.* 4th Dec. 1835. 3 P. C. Cases. Case 5.

250. A son, actual or adopted, who may have accused his actual or adopted parents publicly, and at the same time falsely, of profligate or otherwise disgraceful conduct, cannot, according to the Bengal Shastras, inherit any property whatsoever which may have appertained to the said parents, until he shall have performed the *Mahábirt*, or greater expiation, which is similar to that to which a Brahman is subject, who may unknowingly have slain one of his own tribe. *Bhola Nath Raee* v. *Mt. Sabitra and others.* 10th March 1836. 6 S. D. A. Rep. 62.—Braddon & Halhed.

II. Muhammadan Law.[3]

1. *General Application of the Estate.*[4]

251. Two-thirds of the property of the deceased, after payment of debts, necessarily fall to the heirs-at-law, notwithstanding any bequest to the contrary. *Kishwur Khan* v. *Jewun Khan.* 9th Aug. 1799. 1 S. D. A. Rep. 26.—Cowper. *Ruzia Begum* v. *Aka Moohummud Ibrahim.* 8th Aug. 1806. 1 S. D. A. Rep. 150.—H. Colebrooke & Fombelle.

2. *Descent.*

252. The sisters of a deceased Musulmán are excluded from the inheritance by the father. *Bhanoo Beebee* v. *Emaum Buksh.* 5th Aug. 1803. 1 S. D. A. Rep. 68.—H. Colebrooke & Harington.

253. Parties related in the male

[1] See p. 338, note 4.

[2] For the law respecting sons adopted by purchase, see 2 Str. H. L. 132 *et seq.*

[3] In the Muhammadan law of Inheritance, as administered in British India, we find few conflicting doctrines when compared with the same law in the Hindú Code. This arises from the former being more defined, and based on more invariable principles, than the latter, besides being restricted in its application, in India, to the tenets of but two sects, viz. those of *Abú Hanífah* and his disciples *Abú Yúsuf* and *Muhammad*, and those of the Imámiyah or Shía sect. The general law of the country is that of *Abú Hanífah*, and no other is administered in the Supreme Courts in cases of Muhammadan Inheritance. The Imámiyah Code is now admitted by the Honourable Company's Courts, where both parties are Shías. Under these circumstances, I have not thought it necessary to refer constantly to the Muhammadan law books, but have only directed the attention of the reader generally to those places where the subjects illustrated by the decided cases are treated of by competent authorities. I have omitted to refer to the Sirájíyah, although the work is accessible to the English reader through the medium of Sir W. Jones's translation. This I have done advisedly, since (as observed by Sir W. Macnaghten) the style of the work, being a version of a scientific Arabic treatise, is necessarily so abstruse, that a knowledge of the original language is almost requisite to the study of the translation; and, moreover, the work itself, together with its commentary, the Sharífiyah, may be said to be embodied in a more intelligible form in Baillie's excellent treatise on the Law of Inheritance, and Sir W. Macnaghten's Principles and Precedents of Muhammadan Law. It may be remarked, that the term "heir" is used throughout these pages to signify any person who has a right to inherit any species of property whatever.

[4] Baillie, Inh. I. Macn. Princ. M. L. 1.

line, in the fourth degree of descent, to a common ancestor who was in the sixth degree of the last legal proprietor of an estate, were held to be entitled to succeed, to the exclusion of one who was only related to such last proprietor through females. *Shah Ilahi Buksh* v. *Shah Casim Ali.* 5th Aug. 1805. 1 S. D. A. Rep. 98.—H. Colebrooke & Harington.

254. Where a Musulmán, shortly before his death, made over his share of a *Talook* to his widow in satisfaction of dower settled on her at marriage, and she held it till her death, thirty-three years afterwards, without her title being disputed by any of the heirs of her late husband; it was held that her heirs were entitled to inherit such share as having belonged to her. *Mirza Moohummud and another* v. *Jareut oz Zohra Begum and others.* 22d July 1808. 1 S. D. A. Rep. 243.—Harington & Fombelle.

255. On the death of a person possessed of real and personal property, without issue, and leaving brothers and sisters of the whole blood, and other brothers and sisters of the half blood, by the same father, the brothers and sisters of the whole blood succeed to the entire property, to the exclusion of the half blood.[1] *Shaik Buxoo and others* v. *Shaik Jummal and others.* 24th July 1817. East's Notes. Case 65.

256. If a Musulmán die, leaving the son of a brother, and the son of a sister, their parents having died in his lifetime, the son of the brother will take the whole property, to the exclusion of the sister's son. *Doe dem. Golaum Aubbus* v. *Shaik Aumeer.* 15th Feb. 1820. East's Notes. Case 113.

257. By the law of inheritance as received by the Shía sects, a brother is entirely excluded by a daughter. *Wujeehoonisa Khanum and others* v. *Mirza Husun Ali.* 30th Dec. 1808. 1 S. D. A. Rep. 268.—Harington & Fombelle. *Rajah Deedar Hoosein* v. *Ranee Zoohoorunnisa.* 12th Aug. 1822. 3 S. D. A. Rep. 164.—Leycester, Goad, & Dorin.

258. The decision in this last case was affirmed on appeal by the Judicial Committee of the Privy Council. *Same* v. *Same.* 24th Feb. 1841. 2 Moore Ind. App. 441.

258 *a*. A suit was instituted by *A* for the recovery of property in the possession of *B*, inherited by her, as she alleged, from *C*, a Musulmání prostitute, deceased, and wrongfully possessed by *B* as adopted daughter, the latter being alleged, also, to be a Hindú. But it appearing that all the parties were Hindús, being of the Cast of dancing girls and prostitutes, though calling themselves Musulmánís, and that *A*'s relationship to *C* was five degrees distant, and that *B* was her niece; the Court, under the circumstances, dismissed the suit. *Mt. Wuzeer Buksh* v. *Mt. Burfoonnissa and others.* 19th June 1844. 7 S. D. A. Rep. 76.—Rattray.

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3. *Parentage.*[2]

259. The son of a deceased Musulmán, by a slave girl, was held to be entitled to share equally in the inheritance of his father with another son by the lawful wife of the deceased.[3] *Gholam Husun Ali* v. *Zeinub Beebee.* 20th July 1801. 1 S. D. A. Rep. 48. Lumsden & Harington.

260. Where *A* claimed, as daugh-

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[1] Semble, *Aliter*, where the property was acquired by the same common father, which, on his death, came into the possession of the eldest brother, who continued to carry on the father's trade upon the joint capital.

[2] For the law of parentage, see 1 Hed. 376 *et seq.* Macn. Princ. M. L. 61. par. 31, 32, 33. 261, 262. Cases xii. xiii. Baillie, Inh. 33.

[3] Macn. Princ. M. L. 85. Case iv. It is necessary, in order to establish the parentage of children by slave girls, that the father should acknowledge them, if they are by different mothers; but if they are by the same mother, the acknowledgment of the first-born is sufficient. *Ib.* 61. par. 32. 85, note.

ter (by a concubine), a share of her deceased father's *Zamíndárí*; it was held, on proof that she was the daughter of the deceased, and had been acknowledged by him as his child, that she was entitled to a share in the inheritance.[1] *Fyaz Ali Khan* v. *Mt. Fatima Khatoon.* 3d Dec. 1811. 1 S. D. A. Rep. 357.—Fombelle.

261. The son of a Musulmán, by a slave girl, will inherit as a son, if the father had acknowledged him as such in his lifetime. *Doe dem. Bibee Bunnoo* v. *Mirza Ahmed Allee.* Sittings after 2d Term 1818. East's Notes. Case 78.

262. A son born to a Muhammadan man and woman, living together as husband and wife, though not publicly married, and where there is nothing to invalidate the presumption of their being married, will inherit equally as a son in proved wedlock, and is not divested of his right as one of the heirs to the estate of his paternal uncle, though discarded by the latter. *Mihr Ali and another* v. *Kureemoonisa Begum and another.* 28th April 1814. 2 S. D. A. Rep. 112.—Rees.

263. The acknowledgment of a brother by the heir entitles to inheritance.[2] *Ib.*

264. *Quære,* Whether illegitimate children of a Musulmán by a woman, not a slave, will succeed to the estate of their father by reason of their having been acknowledged by him as his children?[3] *In the goods of Shaik Nathoo.* 24th July 1844. 1 Fulton, 483.

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4. *Of Sharers and Residuaries.*[4]

265. Where a Musulmán died, leaving a widow and a nephew, who for some time had lived with him in the apparent capacity of his heir and adopted son; the widow claimed the whole estate of the deceased, under an alleged will, and the nephew made a similar claim as adopted son; the Provincial Courts directed a Kází and two Muftís to investigate the matter; and on their reporting that neither claim could be considered as established, and that the inheritance should be divided according to the Musulmán laws, the Council confirmed their decree, and, in accordance with it, held that the estate should be divided into four shares, of which one should be given to the widow, and three to the brother of the deceased, who was next of kin, and father of the nephew who claimed as adopted son. *The Patna Case.* 1777. 3 S. D. A. Rep. 195, note.—(Patna Provincial Council.)

266. *Altamghá* lands were granted to a mother for the support of her family, and remained to them (a son and two daughters) at her death. According to the law of inheritance, the lands will be divided into four parts, of which two will fall to the son, and one to each of the daughters: a pecuniary pension was similarly divided. *Kulsoom Khanum* v. *Mirza Mehdee.* 29th March 1798. 1 S. D. A. Rep. 16.—Cowper.

267. The heirs of a Musulmán deceased being a mother and two sons, the estate will be divided into twelve parts, of which the mother will take one-sixth, or two, and the sons five each. *Gholam Husun Ali* v. *Zeinub Beebee.* 20th July 1801. 1 S. D. A. Rep. 48.—Lumsden & Harington.

268. The heirs of a Muhammadan

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[1] It is presumed that the legal opinion, in this case, was induced by the fact (which was indeed deposed to by several of the witnesses) that the mother of the respondent was not only the concubine, but the slave of the deceased *Zamíndár.* The acknowledgment of parentage alone would not avail in the case of a free woman not married to the acknowledger.—Macn.

[2] 3 Hed. 172.

[3] The question was not decided in this case, the decision proceeding on different grounds: the acknowledgment of the father seems to be the main thing to entitle a bastard to a right of succession. 1 Hed. 384. Macn. Princ. M. L. 85. 132.

[4] Macn. Princ. M. L. 3. 12. 23, 24. Baillie, Inh. 57. 71. 87. 95. 111.

deceased being a widow, a mother, a son, and a brother, the estate will be divided into twenty-four, or seventy-two parts, of which the widow will take one-eighth, or three, or nine shares, the mother one-sixth, or four, or twelve, and the residue, or seventeen, or fifty-one, will go to the son, the brother taking nothing. But the son dying, one-third of his share, viz. $\frac{17}{72}$, goes to his mother, the widow, and the residue to his uncle, his father's brother. Hence the division will be: the widow $\frac{26}{72}$, the mother $\frac{12}{72}$, the brother $\frac{34}{72}$. On the mother's death, her son would take her share, and have $\frac{46}{72}$. *Musnud Ali* v. *Khoorsheed Banoo.* 14th Aug. 1801. 1 S. D. A. Rep. 52.—Lumsden & Harington.

269. Any male in whose line of relation to the deceased no female enters is residuary, and succeeds as such, preferably to any distant kindred (*Zú al Ihrám*), or those in whose line of relation a female enters. *Bhanoo Beebee* v. *Emaum Buksh.* 5th Aug. 1803. 1 S. D. A. Rep. 68. —H. Colebrooke & Harington.

270. The heirs of a Musulmán deceased being a widow, a son, a daughter, and two brothers, the estate will be divided into twenty-four parts, of which the widow will take one-eighth, or three, the son fourteen, and the daughter seven parts: the brothers take nothing. *Ib.*

271. And being a mother, a sister, and father's brother, into six parts; of which the mother takes one-third, or two, the sister one-half, or three, and the uncle one share. *Ib.*

272. And being a husband, mother, son, and a daughter, into thirty-six parts; of which the husband takes one-fourth, or nine, the mother one-sixth, or six, the son fourteen, and the daughter seven shares. *Ib.*

273. A Muhammadan deceased, leaving a son, a daughter, and three widows, his estate will be divided into twenty-four parts; of which the widows will take three, or one-eighth of the estate between them. Of the residue, fourteen, or two-thirds of the whole, will go to the son, and seven, or one-third to the daughter. *Beebee Jugun* v. *Bakir Ali and others.* 7th May 1804. 1 S. D. A. Rep. 78. —H. Colebrooke & Harington.

274. And the first and third widows dying, the son takes two-thirds and the daughter one-third of the two twenty-fourths which fell to them. *Ib.*

275. The daughter of a deceased Muhammadan, inheriting an unpaid portion of her mother's dower, and her heirs being at her death, her husband, a daughter, brother, and three sisters; the husband takes a fourth of her estate (viz. the unpaid dower), the daughter a half, the brother a tenth, and the three sisters a twentieth each. *Ali Buksh Khan* v. *Kaleem Beebee.* 24th Aug. 1804. 1 S. D. A. Rep. 83.—H. Colebrooke & Harington.

276. The heirs of a Musulmán being a second wife, a son by a first wife, a son by a second wife, and a daughter of the second wife, the estate will be divided into forty, or nine-hundred and sixty parts, of which the second wife will take one-eighth, or five, or one hundred and twenty, each son fourteen, or three hundred and thirty-six, and the daughter seven, or one hundred and sixty-eight. The daughter subsequently dying, leaving a son and two daughters, her share is thus divided: one-sixth, or twenty-eight go to her mother, seventy to her son, and thirty-five to each of her two daughters. The second wife dying, her son takes her share. Hence the division is: son by the first wife $\frac{336}{960}$, son by the second wife $\frac{484}{960}$, grandson by the daughter $\frac{70}{960}$, and two grand-daughters by the daughter $\frac{35}{960}$ each. *Sufdur Hosein* v. *Enayut Hosein.* 25th Nov. 1805. 1 S. D. A. Rep. 111. —H. Colebrooke & Harington.

277. The heirs of a Musulmán being a widow and two sons, the widow takes an eighth, and the sons equal shares of the residue. *Casim*

Ali v. *Furzund Ali.* 27th Nov. 1805. 1 S. D. A. Rep. 113.—H. Colebrooke & Harington.

278. The heirs of a Musulmán deceased being a son and two daughters, both married to the same person, the estate will be divided into sixteen parts, of which the son will take eight, and each daughter four. The son dying, his sisters divide his share equally, so that each has eight parts of the original estate. The second daughter dies, leaving her husband and two sons; the husband takes two parts, and the sons each three. The first daughter dies, leaving her husband and two nephews; the husband takes four shares, and the nephews two each. One nephew dying, his father takes his share. Hence the division is: the husband $\frac{11}{16}$ of the estate, and the nephew $\frac{5}{16}$. *Mt. Hyalee Khanum* v. *Mt. Koolsoom Khanum.* 4th Sept. 1807. 1 S. D. A. Rep. 214.—H. Colebrooke & Fombelle.

279. The heirs of a Musulmán deceased being a widow, a sister with one son, and another sister with two sons, the estate will be divided into sixteen parts, of which one-fourth, or four, will go to the widow, and the remainder equally to the two sisters, viz. six shares each. On the death of the sisters, the share of the first would go to her only son, that of the second to her two sons in equal shares. Had the sisters died in the lifetime of the proprietor, his wife would have taken her four shares, and the three nephews equal shares in the residue, that is, four each. *Sheikh Buhauder Ali* v. *Sheikh Dhomun and others.* 8th Aug. 1808. 1 S. D. A. Rep. 250.—Harington & Fombelle.

280. The heirs of a Musulmán deceased being a widow, a son, a nephew (son of a half-brother), and the widow's mother, the estate will be divided into twenty-four parts, of which the widow takes one-eighth, or three, and the son the remaining twenty-one parts. But on the death of the son, his mother, the widow, takes one-third of his twenty-one parts, or seven parts, and his half cousin the remaining fourteen; and on the widow's death her mother takes her share. Hence the nephew has $\frac{14}{24}$, and the widow's mother $\frac{10}{24}$. *Ahmud Ollah and another* v. *Behar Ullah.* 7th Aug. 1809. 1 S. D. A. Rep. 284.—Harington & Fombelle.

281. The share of a widow of a Musulmán, where there are no children or other descendants, is one-fourth of her husband's estate; but it being ruled by *Futwas* that there is in modern times no *Bait-ul-mál*, or public treasury, regularly established, the other three-fourths also revert to the widow. *Mt. Soobhanee* v. *Bhetun.* 11th Sept. 1811. 1 S. D. A. Rep. 346.—Harington & Stuart.

282. Where there is but one child of a marriage, or any larger number, the widow is entitled to one-eighth of her husband's property at his death. *Anon.* 4th Term 1813. East's Notes. Case 1.

283. A female dying and leaving a brother and sister, the brother takes two-thirds and the sister one-third of her ancestral property. *Mt. Banoo Beebee* v. *Fukheroodeen Hosein.* 3d May 1816. 2 S. D. A. Rep. 180. —Harington & Fombelle.

284. In collateral descent, children of the brothers of a deceased Musulmán will take two-thirds, and the children of his sisters one-third of the estate, if such brothers and sisters survive him. *Doe dem. Golaum Aubbus* v. *Shaik Aumeer.* 15th Feb. 1820. East Notes. Case 113.

285. But if a Musulmán die leaving the son of a brother and the son of a sister, their parents having died in his lifetime, the son of the brother will take the whole property. *Ib.*

286. The heirs of a deceased Muhammadan being his mother, his widow, and the son of his paternal uncle, the estate will be divided into twelve shares, of which the mother

will take four, the widow three, and the son of the uncle five. *Ib.*

287. The claimants to a Musulmán's property being three widows, three daughters, a mother, and a brother, the property should be made into seventy-two, or two hundred and sixteen parts, of which the widows should get nine, or twenty-seven, the daughters forty-eight, or one hundred and forty-four, the mother twelve, or thirty-six, and the brother three, or nine; and one of the daughters dying before the distribution, her mother takes one-sixth of her share, or eight; two-thirds, or thirty-two, are equally divided between her sisters, who each get sixteen, and the residue goes to the father's brother, her uncle. Hence the division will be: mother $\frac{36}{216}$, first wife $\frac{17}{216}$, second and third wives each $\frac{9}{216}$, two surviving daughters each $\frac{64}{216}$, and brother $\frac{17}{216}$. *Rajah Deedar Hoosein* v. *Ranee Zuhooroonisa.* 4th Aug. 1820. 3 S. D. A. Rep. 46.—Sir J. E. Colebrooke.

288. The preceding decision was according to the Sunníy doctrine; but in a later case between the same parties, in which the uncle claimed his brother's share of a *Zamíndárí*, it was settled, that the parties being of the Shía sect the law must be taken as received by that sect, and the brother (the uncle) was consequently held to be excluded by coexisting daughters; but what would be the legal distribution of his brother's estate was not settled. *Same* v. *Same.* 12th Aug. 1822. 3 S. D. A. Rep. 164.—Sir J. E. Colebroke & Goad.

289. And in another case between the same parties it was decided, that though, in the distribution of heritage, both the Sunníy and Shía sects recognize the same *Faráíz*, or specific shares, they differ as to the distribution of the *Radd*, or residue, should there be any. The Shías prefer the nearest kin, who divide it in proportion to their specific shares; the Sunníys, on the contrary, give preference to the *Asbah*, or agnate kinsmen. *Same* v. *Same* 18th May 1830. 5 S. D. A. Rep. 29.—Turnbull & Rattray.

290. This decision was confirmed on appeal by the Judicial Committee of the Privy Council. *Same* v. *Same.* 24th Feb. 1841. 2 Moore Ind. App. 441.

291. The heirs of a Musulmán being his widow and three daughters, the estate should be made into twenty-four parts, of which the widow takes an eighth, or three, and the three daughters seven each.[1] *Shumsheer Ali Khan* v. *Wilayutee Begum.* 11th Dec. 1820. 3 S. D. A. Rep. 58.—Sir J. E. Colebrooke.

292. The heirs of a Musulmán being his widow, two sons, and four daughters, the estate should be made into sixty-four parts, of which the widow is entitled to eight, the sons to fourteen each, and the daughters to seven each; and being his mother, his widow, and three sisters, should be made into thirty-nine parts, of which his widow is entitled to nine, his mother to six, and his sisters to eight each.[2] *Ranee Bukhsh Beebee* v. *Nadir Beebee.* 11th Dec. 1820. 3 S. D. A. Rep. 59.—C. Smith.

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[1] Where a wife inherits from her husband, leaving children, her share in that case being one-eighth, and there are other claimants entitled to one-sixth, one-third, or two-thirds, the division must be by twenty-four.—Macn.

[2] In this case, although the *Futwa* of the law-officer of the Zillah Court was so far correct that it did not operate unjustly in respect to any of the heirs, yet as it did not appear that any distribution of the property had taken place until after the death of one of the heirs entitled to share in the estate, the *Futwa* ought to have been delivered according to the rules prescribed in a case of vested inheritance. This observation was made by the law-officers of the Sudder Dewanny Adawlut; but as it appeared that, by this mode of calculation, the result would be in substance the same, no further notice was taken of the omission.—Macn. For the rules to be observed in cases of vested inheritance, where a person dies and leaves heirs, some of whom die prior to any distribution of the estate, see Macn Princ. M. L. 27, 28. Baillie Inh. 121.

293. The heirs of a Musulmán being two widows, a mother, and a son, the estate should be made into forty-eight parts, of which the widows are entitled to one-eighth, or six, taking three each, the mother to one-sixth or eight, and the son to the remaining thirty-four shares. One widow and the mother dying, the son takes their shares. Hence he will have forty-five shares out of forty-eight. *Mirza Qaim Ali Beg* v. *Mt. Hingun and others.* 15th April 1822. 3 S. D. A. Rep. 152.—Leycester & Dorin.

294. The heirs of a Muhammadan being a widow, a mother, and a half sister, the property should be made into thirteen parts, of which three belong to the widow, four to the mother, and six to the half sister. *Mt. Shureef Oonisa* v. *Mt. Khizur Oonisa Khanum.*—5th Feb. 1823. 3 S. D. A. Rep. 210.—Dorin.

295. The heirs of a Musulman being his mother, his brother, and his widow, his property should be made into twelve parts, of which four should go to the mother, five to the brother, and three to the widow; and on the mother's death her shares go exclusively to her surviving son.[1] *Fuqeer Moohummud* v. *Mt. Kandee.* 15th Jan. 1824. 3 S. D. A. Rep. 295.—J. Shakespear.

296. *A*, the son of a daughter's daughter of a woman who died in the lifetime of her husband (who left no other heir but *B*, an only son), was decreed to be entitled to one-half share of his maternal great-grandfather's estate, *B* taking the other. *Mukhun Lal* v. *Wuzeer Ali.* 14th March 1825. 4 S. D. A. Rep. 32.—Harington & Sealy.

297. It was held, that the heirs of a Muhammadan deceased being a widow, a son, four daughters, and three sons of a deceased son, the property will be made into one hundred and ninety-two shares, of which the widow will take twenty-four, the son forty-two, each of the daughters twenty-one, and each of the grandsons fourteen. *Moohummud Ali Khan and others* v. *Moohummud Ashruf Khan and another.* 30th April 1827. 4 S. D. A. Rep. 231.—Leycester & Dorin.

298. The heirs of a deceased Musulmán being a son and a daughter, the property will be made into three shares, of which the son will get two, and the daughter one. *Mt. Wajida* v. *Kureem Buksh.* 14th July 1827. 4 S. D. A. Rep. 247.—Dorin.

299. A sister, with an only brother, is entitled, at her father's death, to a third of his property; and on the death of her brother, without being married, to his entire share of the property; to half of it as her specific portion, and to the other half by return, or *Radd.* *Ib.*

300. Where the heirs of a Musulmán deceased are a widow, a son, and two daughters, the property should be divided into thirty-two parts, of which the widow is entitled to four, the son to fourteen, and the daughters to seven each. *Chutter Singh* v. *Mt. Noorun.* 29th Nov. 1827. 4 S. D. A. Rep. 280.—Sealy.

301. Held, that a person who was descended from the great-grandfather of a deceased Musulmán was entitled to a share of the residue. *Doe dem. Sheikh Moohummud Buksh* v. *Shurf Oon Nissa Begum and another.* 2d Term 1831. Baillie Inh. 82. (Sup. Cot. Calc.)

302. In the succession to, or partition of, an estate, the shares of a father, mother, and spouse, are respectively one-third, one-sixth, and one-half. *Imdad Ali* v. *Kadir Bakhsh and others.* 24th April 1833. 5 S. D. A. Rep. 296.—Walpole.

303. The heirs of a deceased Mu-

[1] The legal share of a mother, where there are no children, nor son's children, and only one brother or sister, is one-third, and of a widow, where there are no children, nor son's children, one-fourth; and where a fourth and a third share come together, the property should, in the first instance, be made into twelve shares. The brother takes what remains, as residuary, after the legal sharers have been satisfied.—Macn.

sulmán being two widows, three sons, and four daughters, his property will be divided into eighty shares, of which the widows will take ten between them, the sons fourteen, and the daughters seven each. *Syed Lutf Ali and another* v. *Mt. Wasaum.* 25th April 1837. 6 S. D. A. Rep. 159.—Money.

304. The heirs of a Musulmán deceased being two widows, a mother, and three daughters, one by the first wife, and two by the second, the estate will be divided into two hundred and forty, or twelve hundred parts, of which the widows will receive fifteen, or seventy-five each, the mother forty-two, or two hundred and ten, and the daughters fifty-six, or two hundred and eighty each. *Mt. Rabea Khatoon and another* v. *Budroonissa.* 28th Dec. 1841. 7 S. D. A. Rep. 62.—Lee Warner & Reid.

305. But one of the daughters of the second wife dying before the distribution of the estate, leaving as her heirs her mother, her uterine-sister, and her half-sister, her share, $\frac{280}{1200}$, is thus divided: The second wife, her mother, takes one-fifth, or fifty-six, the half-sister one-fifth, or fifty-six, and the uterine-sister three-fifths, or one hundred and sixty-eight. Hence the division of the entire property will be: the first wife $\frac{75}{1200}$, the second wife $\frac{141}{1200}$, the mother $\frac{210}{1200}$, the half-sister $\frac{256}{200}$, and the uterine-sister $\frac{448}{1400}$. *Ib.*

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5. *Of Distant Kindred.*[1]

306. Of two widows, on whom their husband had settled his property in equal proportions, one dying, the other has no right of inheritance, but the deceased widow's sister's son will take the property in default of nearer heirs.[2] *Kali Khan* v. *Rajah Mitterjeet Sing.* 19th May 1821. 3 S. D. A. Rep. 90. —Goad & Dorin.

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6. *By Custom.*

307. Two sons of a deceased Musulmán in Malabar brought a suit against their late father's nephew to recover possession of certain paddy fields and outstanding debts, the property of their late father. The nephew claimed to succeed as heir to his uncle's estate in conformity with certain local usages of Malabar, observed chiefly by the Hindús there; but failing to prove that such custom prevailed in the family, the estate was adjudged to the sons according to the Muhammadan law of inheritance. *Anon.* Case 5 of 1809. 1 Mad. Dec. 29.—Scott & Greenway.

308. An illegitimate son of a Muhammadan, who, during his lifetime, had held a share of an office which was *Watan*, or hereditary, has no claim to such share on the decease of his father where the custom of the country does not allow bastards to succeed to hereditary offices; and although the Muhammadan law recognizes no *Waṭan* property, but classes all property under the term *Tarikát*, or "effects," and by that law an illegitimate son would therefore inherit and succeed to the office; yet, under Sec. 14. of Reg. II. of 1800,[3] which directs the customary rule of the country to operate, under certain circumstances, to the exclusion of the written law, such claim cannot be admitted where the custom of the country differs from the law. *Mt. Humeedoon Nisa* v. *Ghoolam Moheeood Deen Chowdree.* 21st Feb. 1821. 2 Borr. 33.—Sutherland.

309. The family usage, that a *Zamíndári* has never been separated, but had devolved entire on every succession, though proved to have existed as the custom for many generations, will not exempt the *Zamíndári* from the operation of Reg. XI. of 1793, which provides, in case of

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[1] Macn. Princ. M. L. 7. Baillie, Inh. 127.

[2] In this case the appellant (the son of the deceased widow's sister) came under the description of that class of heirs who rank third among the distant kindred, and who take the estate in default of those heirs who are technically termed legal sharers and residuaries. Macn. Princ. M L. 8. par. 45.

[3] Rescinded by Reg. I. of 1827

intestacy, for the division of the landed estate among the heirs of the deceased. *Rajah Deedar Hossein* v. *Ranee Zuhooroon Nissa.* 12th Aug. 1822. 3 S. D. A. Rep. 164.—Leycester, Goad, & Dorin.

310. This decision was confirmed, on appeal, by the Judicial Committee of the Privy Council. *Same* v. *Same.* 24th Feb. 1841. 2 Moore Ind. App. 441.

311. Reg. X. of 1800 does not apply generally to all undivided *Zamíndáris*, in which a custom prevails that the inheritance should be indivisible, but only to the Jungle Maháll, of Midnapore and other districts, where local customs prevail; and therefore only partially, and to that extent, repeals Reg. XI. of 1793. In a suit, therefore, by a party in possession of one moiety of a *Zamíndári*, for recovery of the other, on the ground that the estate was, according to the family rule, indivisible, it was held, by the Judicial Committee of the Privy Council, that the property not being a Jungle Maháll within the provisions of Reg. X. of 1800, the family rule, if proved, was abrogated by Reg. XI. of 1793, and (the title deeds set up in the pleadings not being satisfactorily proved) that the descent must be governed according to Reg. IV. of 1793, by the law of the religious sect to which the disputants belonged. The Judicial Committee, in affirming the judgment of the Court below, held the *Zamíndári* divisible among the co-heirs of the deceased *Zamíndár*, according to the laws of the Shía or Imámíyah sect to which they belonged.[1] *Ib.*

7. *To Offices.*

312. Where a Musulmán claimed the *Sajjádeh-nishíní*, or right of superintendence of a religious establishment, together with the *Tawliyat*, or trusteeship and management of certain rent-free lands attached to it, he being a lineal descendant of the original founder, as required by the original assignment, judgment was given in his favour against one claimant, who was descended from the founder by the intervention of females, and another (a woman), who was prevented by her sex from holding the offices, under the provisions of the grant, but with a reservation for his obtaining a *Sanad* from Government.[2] *Mt. Kyaon-Nisa and another* v. *Mofukir-ol-Islam.* 17th Sept. 1805. 1 S. D. A. Rep. 106.—H. Colebrooke & Harington.

8. *Exclusion from Inheritance.*[3]

313. Homicide, whether punishable by retaliation or expiable, is an impediment to succession to the estate of the person slain.[4] *Shah Abadee* v. *Shah Ali Nukee.* 12th Oct. 1803. 1 S. D. A. Rep. 73.—H. Colebrooke & Harington.

314. A person obtaining a grant in the name of another, with the intention of holding the property during his life, and securing the succession of the nominal grantee at his death, cannot thereby defeat the right of inheritance of his lawful heirs, who are entitled at his death to succeed to the property of which he died possessed as part of his estate. *Sheikh Buhau-*

[1] See *supra*, Pl. 210, note.

[2] The decision on this case was governed by the special conditions of the endowment, no less than by the general law respecting pious appropriations. The offices of principal of the institution, and of trustee and manager of the lands, had been reserved by the original assignment for a lineal descendant of the founder. According to the prevailing authorities of Muhammadan law, lineal descent intends the male line; and a female descendant in the male line is disqualified by sex for one of the offices. It became therefore necessary to select a person from the male descendants of the founder, and the trust being of a public nature, it appeared proper that the nomination of the person to be appointed should have the sanction of Government.—Macn.

[3] Macn. Princ. M. L. 31. Baillie, Inh. 21.

[4] Among Shías, the homicide, whether justifiable or accidental, does not operate to exclude from the inheritance. The homicide, to disqualify, must have been of malice prepense. Macn. Princ. M. L. 40. par. 30.

der Ali v. *Sheikh Dhomun and others.* 8th Aug. 1808. 1 S. D. A. Rep. 250. —Harington & Fombelle.

314*a*. Apostacy from the Muhammadan faith, if subsequent to the devolution of hereditable property, does not deprive the apostate of his right of succession. *Wujeehoonisa Khanum and others* v. *Mirza Husun Ali.* 30th Dec. 1808. 1 S. D. A. Rep. 268.—Harington & Fombelle.

315. A natural son of a Muhammadan woman, by a Christian, if brought up in the profession of the Christian religion, cannot of right inherit her property. *In the goods of Bibee Hay.* 3d Term 1819. East's Notes. Case 105

316. The childless widow of a Musulmán dying in his father's lifetime is not entitled to inherit. *Doe dem. Golaum Aubbus* v. *Shaik Aumeer.* 15th Feb. 1820. East's Notes. Case 113.

317. A Musulmán cannot inherit with his paternal uncle if his father died before his father's father; in other words, there is no right of representation recognized by the Muhammadan law. *Ubdoo Ruhman* v. *Mudaree Khan and others.* 17th Aug. 1824. 3 S. D. A. Rep. 403.—C. Smith & Martin.

318. Where the original ancestor of the parties had been deprived by the then existing Government of estates, which were recovered under another Government by the descendants of one of his sons, it was held, that the descendants of another son have no right to participate. *Ib.*

319. A renunciation of inheritance during the lifetime of the ancestor was decided to be null and void; and it was held that a claim to such inheritance so renounced might be preferred at any subsequent period without limitation. *Mt. Khanum Jan* v. *Mt. Jan Beebee.* 13th Feb. 1827. 4 S. D. A. Rep. 210.—Leycester & Dorin.

III. Of Europeans.[1]

1. *In the Supreme Courts.*

320. Held, that lands of British subjects must be considered as descending, according to the English law, except so far as the Charter may have altered that course of descent. *Joseph* v. *Ronald.* 1 Moore Ind. App. 320.

321. It was held that the property of Europeans in land at Bombay follows the property of the person, or, in other words, that, like leaseholds in England, it is personal property for the purpose of succession and of liability for debt by execution or otherwise, and in other matters of title, and must therefore be as variable as the laws of the various Casts which compose the Society; and where *A* and *B*, two Portuguese, claimed the lands of a deceased lunatic, *A* claiming as heir-at-law, and *B* as only next of kin and administratrix, judgment was given in favour of the latter, the Court considering the lands to be personal property, and deciding that if *A* had any right to a part of the succession of the deceased, he might claim either his general distribution share, or his specific interest in the peculiar property which he might suppose to be liable to his claim. But his claim must be under the title of *B*, as administratrix.[2] *Doe dem.*

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[1] By Act XXX. of 1839, the English law of inheritance contained in the Stat. 3d and 4th Will. IV. c. 106. was extended to the territories of the East-India Company, in cases which, but for the passing of such Act, would be governed by the English law of inheritance as it existed previously to the passing of the aforesaid Statute.

[2] In this case, Anstruther R. observed—"There has been no instance of a succession of an eldest son of any *English* subject, to the lands or houses of the father situated in Bombay, to the exclusion of the younger children, although the division has, in two instances, been contested." But it has been decided by the Court of Chancery in England, that lands of Europeans in the East Indies, held by a tenure of the nature of fee-simple, do not pass by an unattested will, but descend to the person who would

De Silveira v. *Salvador Bernardo Texeira.* Perry's Notes. Case 1. (Recorder's Court.)

322. The Portuguese laws of succession remain in full force, as regards the Portuguese in Bombay; since, although the law of Portugal cannot of its own force operate at Bombay, the customs observed by the Portuguese have a legal commencement in the island, and are valid. *Ib.*

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2. *In the Courts of the Honourable Company.*

323. It was held, that, by the Portuguese law of inheritance, one moiety of the estate of the husband devolves at his death on his widow, and the other moiety on his next of kin. According to this law, a distribution was directed to be made of the landed estate of a deceased person; but his wife dying, and several claims to her moiety being preferred, it was subsequently discovered that the deceased husband was a British subject. As he left no heirs, (the relations of a mother or a wife not being heirs to real property, according to English law,) it was decreed that the estate should revert to Government, by whom it was originally granted to the father of the deceased.[1] *Joanna Fernandez* v. *Domingo de Silva and another.* 12th Feb. 1817. 2 S. D. A. Rep. 227.—Harington & Fombelle.

324. Per Le Procureur du Roi at Chandernagore. Where the widow of a French intestate had been in a state of community with her deceased husband, she is entitled to one moiety, and his collateral kin to the other moiety of his personal estate. *Durand and another* v. *Boilard and others.* 15th Feb. 1832. 5 S. D. A. Rep. 176.

IV. Of Jains.

324*a*. The Jain Shastra recognizes heritable right in an adopted son. *Maharajah Govindnath Ray* v. *Gulal Chand and others.* 23d March 1833. 5 S. D. A. Rep. 276.—H. Shakespear & Walpole.

V. Of Pársís.

325. It was held by an award of the *Dastúr*, that if, among Pársís, a son die in his father's lifetime, the father is entitled to his property, because he pays his son's funeral expenses. *Furidoonjee Shapoorjee* v. *Jumshedjee Nowshirwanjee.* 25th May 1809. 1 Borr. 23.—Duncan, Lechmere, & Rickards.

326. It was held by an award of the *Dastúr*, that among Pársís, if a son, after the death of his father, by his own free will and consent become the adopted son of another, he is entitled to share both in the property of his real father and in that of the person who adopted him.[2] *Ib.*

327. Among Pársís, a person dying intestate and leaving a grandson, with the wife of a second marriage, by whom he left no issue, if the first wife of the deceased be alive, she and the grandson will share the property equally between them; the second wife will only retain her dowry (viz. whatever property she brought from her own house), and

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be heir-at-law in England. *A*, by an unattested will, devises lands to *B*; *B* receives the rents, and by a will, also unattested, gives the lands, together with a legacy, to the heir-at-law of *A*; the heir may receive the legacy, and also call for an account of the rents received by *B*. *Gardiner* v. *Fell.* 29th July 1819. 1 Jacob & Walker, 22.

[1] Had this case been decided according to the law of Portugal, the decision would have been the same; as it appeared, from a communication with some professors of the law at Goa, (who were latterly consulted,) that by a special law of Portugal, termed the *Mental*, and applicable to this case, all grants made by the Crown, and sub-grants made by any great donees of the Crown, become escheats on failure of the legitimate descendants of the original donee; relations not in the direct line being excluded. —Macn.

[2] The award in this case was held good in all the Courts merely *as* an award under Sec. 20. of Reg. VII. of 1800 and the point here noticed was not discussed. Reg. VII. of 1800 was rescinded by Reg. I. of 1827.

the grandson inherits all the remainder, though there be no will in his favour. *Gooshtusp Suhoorabjee* v. *Kaoosjee Kala Bhaee.* 18th Dec. 1816. 1 Borr. 317. — Nepean, Nightingall, & Elphinston.

328. A Pársí separated from his wife can have no claim to her property at her death; and in the absence of a testamentary disposition the property would go to the nearest relative of her parents. *Burjorjee Bheemjee* v. *Ferozshaw Dhunjeeshaw.* 10th Sept. 1839. Sel. Rep. 206.—Giberne, Pync, & Greenhill.

VI. Of Sikhs.

329. Semble, By the Sikh law the widow inherits the property solely, if there be no children. *Doe dem. Kissenchunder Shaw* v. *Baidam Beebee.* Jan. 1815. East's Notes. Case 14.

330. Semble, Among the Sikhs there is no difference between the rights of inheritance of a *Niháh* or second wife, and of a woman who had been married only once; and therefore the widow of two husbands would inherit the property of her last husband, in the same right and manner as if she had never been married before. *Ib.*

331. Semble, By the law of the Sikhs, where an intestate dies leaving a widow and an adopted or natural son him surviving, the widow is entitled to five-sixteenths of the intestate's property, and the son to the remainder. *Ib.*

332. The son of a Sikh of the Khythy[1] Cast, and being a Hindú born of a slave, reputed to be of the same Cast, to whom the father was married by an inferior ceremony of marriage called *Anand*, (the *Niháh* of the Muhammadans,) was allowed to have a share equal to one-half of the share of another son by the same father, whose mother was regularly married to his father by the *Baya* form, and who in consequence was considered the superior wife.[2] *Doe dem. Juggomohun Mullick and others* v. *Saumcoomar Beebee and others.* 29th March 1815. East's Notes. Case 31.

VII. Of Armenians.

333. Held, that in the case of an Armenian dying intestate, leaving a childless widow and a whole brother, the widow is entitled to one-sixth of her husband's estate, real and personal.[3] *Avietic Ter Stephanos* v. *Anna Bibi.* 20th Aug. 1838. 6 S. D. A. Rep. 238.—Rattray & Money.

INITIATORY CEREMONIES: —See Adoption, 67 *et seq.*

INJUNCTION. —See Practice, 172 *et seq.*

INSANITY.—See Lunatic, *passim*; Criminal Law, 303 *et seq.*

[1] *Quære*, Kshatriya.

[2] The Court in this case confirmed the evidence of marriage, and the right of the son of the *Anand* marriage to inherit one-third of the property in the proportion stated by the Pandits with respect to the illegitimate sons of Súdras, the Sikhs not admitting, in strictness, of Cast; and this being an inferior species of marriage by their law, and the Pandits admitting the law of marriage as practised by the Sikhs in Bengal, though not known to the Hindús as such, by *Anand.* Sir Edward H. East remarks, in a marginal note to this case, "I am not clear that, upon the evidence, though slight, of the slave mother being a Khythy, the son ought not to have had a full share; for the Pandits seemed to consider their Cast as still subsisting, or at least dormant. But when it was first suggested, the defendant's counsel seemed satisfied."

[3] The decision in this case seems to have been passed, not so much with reference to the principles of the Armenian law regarding succession to property, as to the fact of the virtual acknowledgment by the respondent of the rights of the individual through whom the appellant claimed.—Macn.

INSOLVENT.

I. In the Supreme Courts, 1.
II. In the Courts of the Honourable Company.
1. *Generally*, 3.
2. *Perjury by.—See* Criminal Law, 465. 492.

I. In the Supreme Courts.

1. A judgment docketed according to the 48th plea rule,[1] and *fieri facias* issued, does not constitute a lien on the lands of the debtor, nor entitle the plaintiff to be paid preferentially out of assets in the hands of the assignee of the insolvent, which have accrued from the sale of the defendant's lands. *Colvin* v. *Oboychurn Dutt.* 1st Term 1833. Cl. R. 1834. 46.

2. Palmer & Co. having borrowed a large sum of money of the Bank of Bengal, deposited Company's paper with the bank to a greater amount as a collateral security, accompanied with a written agreement, authorising the bank, in default of repayment of the loan by a given day, "to sell the Company's paper for the reimbursement of the bank, rendering to Palmer & Co. any surplus." Before default was made in repayment of the loan, Palmer & Co. were declared insolvent, under the Indian Insolvent Act, 9th Geo. IV. c. 73., by the 36th Section of which it was declared, that where there had been mutual credit given by the insolvents and any other person, one debt or demand might be set off against the other; and that all such debts as might be proved under a commission of bankruptcy in England might be proved in the same manner under the Indian Insolvent Act. At the time of the adjudication of insolvency, the bank were also holders of two promissory notes of Palmer & Co., which they had discounted for them before the transaction of the loan, and the agreement as to the deposit of the Company's paper. The time for repayment of the loan having expired, the bank sold the Company's paper, the proceeds of which, after satisfying the principal and interest due on the loan, produced a considerable surplus. In an action by the assignees against the bank, to recover the amount of the surplus, it was held that the bank could not set off the amount of the two promissory notes, and that the case did not come within the clause of mutual credit in the Bankrupt Act. *Young and others* v. *The Bank of Bengal.* 2d Dec. 1836. 1 Moore, 150. 1 Moore Ind. App. 87.

[1] See 2 Sm. & Ry. 91. par. 9.

II. In the Courts of the Honourable Company.

1. *Generally.*

3. A person not in confinement for the satisfaction of the decree of a Civil Court, cannot obtain the benefit of the insolvent rules prescribed by Sec. 11 of Reg. II. of 1806. *Khwaja Akram Nicus Poyose, Petitioner.* 18th May 1839. 1 Sev. Cases 93.—Reid.

4. Certain property was under attachment by the Sheriff of Calcutta, without being sold, for three years. Held, that no fraud could be imputed to the owner (an insolvent) in consequence of the prolonged attachment without sale by the Sheriff, so as to subject him to arrest under Sec. 11 of Reg. II. of 1806. *Williams, Petitioner.* 13th Feb. 1844. S. D. A. Sum. Cases, 56.—Reid.

5. The Sudder Dewanny Adawlut ordered the arrest of a debtor, discharged from confinement by the Zillah Judge, pending the sale of his property, the law enacted by Sec. 11. of Reg. II. of 1806. requiring the detention of the debtor until he should pay the debt due by him, or establish his in-

solvency. *Syud Kubbeer Hossein, Petitioner.* 29th July 1844. S. D. A. Sum. Cases, 60.

6. It is an insufficient reason for the discharge of a debtor from confinement without taking his oath of insolvency, that the creditor cannot point out any property belonging to him. *Raja Muheshwur Buksh Sing, Petitioner.* 2d Sept. 1844. S. D. A. Sum. Cases, 60.—Reid.

INSOLVENT COURT.

1. The Insolvent Court has power to direct an insolvent colonel to pay over one-half of his "command allowances" to the assignee for the benefit of his creditors, even though such command allowances should accrue subsequently to the date of his insolvency. *In the matter of Colonel Harvey.* 2d July 1840. 1 Fulton, 378.

INSTITUTION FEE.—See PRACTICE, 245 *et seq.*

INSURANCE.

I. OF LIVES, 1.
II. OF SHIPS, 1 *a.*

I. OF LIVES.

1. It was held that a clause in the Calcutta Laudable Society for insurance of lives, excluding from its benefit a life lapsing by suicide or the hands of justice, does not except from its benefit a person dying by his own hand when *non compos mentis* at the time, as the word suicide, as used in such clause, must be taken in its criminal sense.[1] *Bayley and another* v. *Alexander and others.* 1st April 1818. East's Notes. Case 79.

II. OF SHIPS.

1 *a.* A party claiming to recover on a policy of insurance on a ship, such insurance having been effected at the usual rate, and the party suspecting, and having concealed from the insurers his suspicions of, the fact that the ship had been captured long before the suit, the claim was dismissed with costs. *Atmaram Nurbheeram* v. *Bhugwandas Motteeram.* 25th March 1812. 1 Borr. 45.—Browne, Abercrombie, & Elphinston.

2. The loss on goods partially damaged by a vessel getting aground was adjudged to be borne by the owners, and not by the underwriters on *respondentia* and insurance, on the ground that the risk of *respondentia* lenders was on the block of the vessel solely. *Tharamul Purusram and others* v. *Lukmeedas Laldass.* 18th Aug. 1815. 1 Borr. 170.—Sir E. Nepean, Nightingall, Brown, & Elphinston.

3. But this decision was afterwards overruled, and the underwriters on *respondentia* were declared to be liable for the damage of goods specified in the *respondentia* bond. *Tharamul Purusram* v. *Balmoo-*

[1] But two cases involving the like point have been recently decided in England, and it was there held that the proviso against suicide in a policy of insurance included all acts of self-destruction whatsoever. *Borradaile* v. *Hunter.* 1843. (Tindal, C. J., *dissent.*) 5 Mann. & Gran. 639. *Schwabe* v. *Clift.* 1846. 2 Carr. & Kir. 134 & App. *Ib.* The decision of the learned Chief Justice of Bengal, in the case noted in the text, could not but have had great weight, had it been quoted in the argument at the bar of the two English cases; and as the principle is apparently just, it is doubtful whether the opinion of so high an authority as Sir Edward H. East, in conjunction with the dissentient voice of Sir Nicholas Tindal, would not have led to different decisions. Should the point again arise in England, the arguments of *Spankie* and *Hogg*, and the judgment of the Supreme Court, might be referred to with advantage. See Vol. II. of this work, 141 *et seq.*

INTRODUCTION.

EVERY one who has attempted the study of the Law as administered in the British territories in India must have felt, and will be ready to acknowledge, the want of elementary and comprehensive works treating of this most important subject.

The laws themselves are so diverse and complicated in their nature, and are spread over such a multitude of volumes, that, in the absence of such works, a long course of laborious investigation and patient study becomes requisite, before the student can see his way through the mass of legislation, which must appear to all, at the outset, an impenetrable chaos.

It is true that the Regulations and the Acts of the Legislative Council of India have been printed and published, and that various treatises on native law, both by European authors and in translations from the works of Hindú and Muhammadan lawyers, have appeared at different times. The Regulations, however, are frequently vague, and not easily to be construed, and from their voluminousness, and the manner in which they are framed, are always difficult of reference; whilst, with regard to the native laws, a difficulty arises, on the other hand, from the paucity of the materials, and still greater obstacles present themselves on the ground of obscurity. The works on native law by European writers are unfortunately few in number; and those translated from the original languages, though more numerous, are, from their nature, not calculated to be of much assistance to a beginner: the latter class treat of the doctrines of different schools, in many instances totally opposed to each other, without adverting to the distinction; they abound

with subtleties of reasoning supporting contradictory interpretations of the texts of the ancient lawgivers; and they are in every case couched in terms difficult to be understood, unless after a long acquaintance with the method pursued by the Indian jurists in treating of legal subjects, and some preliminary knowledge of those religious systems with which the laws are intimately connected, and of which, in fact, they form an integral part.

Thus this want of elementary books presents a serious difficulty at the very commencement of the legal education of those destined to exercise judicial functions in India; and, were it not for the system of progressive advancement, which wisely assigns the lighter labour and the more limited authority to those newly arrived in that country, would long since have been productive of consequences totally subversive of justice, and fatal to our interests.

The system of progressive advancement to which I have alluded, has, it is true, by granting time for the gradual acquirement of the laws by study on the spot, and for the accumulation of knowledge by actual experience, in proportion to the increasing duties which the judicial officers are called upon to perform, supplied, to some extent, the absence of facilities for preliminary study. But it must not be concluded from this that such facilities are unnecessary. It cannot be disputed that men have succeeded very well, and have become distinguished as Judges and Magistrates, without having turned their attention to the laws of India previously to their going to that country; but no one can say how much greater might have been their success, or how much sooner they might have attained the same distinction, had the study of those laws formed a part of their early education.

The Judges of Her Majesty's Courts of Judicature, in nearly every instance, arrive in India totally unacquainted with more than one branch of the laws which they are called upon to administer, and frequently return to England before they have had time to acquire the requisite knowledge, either by study or experience. They are appointed at a more advanced age than the civil servants of the Honourable East-India Company;

their time is fully occupied; and though they certainly possess the advantage of a legal education in this country, they have for these reasons fewer opportunities of gaining information, with respect to the native systems of law, than those enjoyed by the Judges of the Sudder and Mofussil Courts, and must consequently feel in a greater degree the absence of works affording such information.

Almost all the European authors who have written upon Indian law have principally devoted their attention to theories; each writer dilating upon the course which he conceives ought to be pursued in legislating for India, and neglecting to describe the system which has been adopted, and the laws as they now exist.

Taking all these circumstances into consideration, it will at once be evident that any work tending to render the knowledge of the actual law of British India more readily accessible must be productive of advantage.

Several years since I contemplated an attempt to supply such a work; but I soon found that one great source, from which fixed principles must mainly be derived, was extremely difficult of access. I allude to the decisions of competent Courts, illustrating the doctrines laid down in the text books, and fixing with certainty the doubtful points which have arisen as to the interpretation of the various codes.

The published collections of these decisions are comparatively few in number; many of them are not procurable without great difficulty; and in most instances they are destitute of adequate Indices to direct the attention of the reader to the sought-for point.

Having in my possession a large, and, I believe, a perfect collection of the printed decisions, as well as a number of MS. notes of cases and judgments, I accordingly determined that I could not employ my time more usefully than in completing and publishing, in the first instance, an Analytical Digest, which I had already commenced for my own use, and which should contain all the decided cases I could procure, arranged under appropriate titles for reference.

The following work is the result of my labours. It does not

pretend to be of so comprehensive a nature as the Digests of English cases in use in this country, the comparative scarcity of published Reports not admitting of the full illustration of each particular title; but it comprises all the cases that are included in the list of works cited in the sixth section of this Introduction, with the exception only of some few of the later decisions, which came into my hands when the Digest was sent to press; and contains, in addition, a large number of most important decisions in the Supreme Courts at Calcutta and Bombay, which are now published for the first time from the note books of learned Judges of those Courts.

Although a Digest of Cases be not strictly an elementary work, it is still one of an eminently practical nature; and by exhibiting at once, so far as the decisions extend, the actual state of the law in India, it may be regarded as in some measure supplying the place, if not as the necessary precursor, of a more full and detailed exposition of such law.

The utility of a work of this nature will not be questioned by any lawyer, more especially with relation to India, where we have to deal with questions arising on points of law peculiar to the country, and frequently depending entirely upon usage. Such a work presents at one view the constructions, opinions, and decisions of the most competent persons in all doubtful matters; and, if perfectly carried out, and sufficient materials were brought to the task, would, at one and the same time, offer to the student a running commentary on the doctrines laid down in the text books and the enacted law of India, and, to the practitioner and the Judge, data upon which both argument and decision might be founded with safety.

So long ago as the year 1813 Mr. Dorin remarked on the necessity of establishing the authority of precedent in India in the following words—"I think it should be enacted by a Regulation, that, from a given period, the judgments of the Court shall be considered as precedents binding upon itself and on the inferior Courts in similar cases which may arise thereafter. This will have the effect of making the superior Courts more cautious, and of introducing something like a system for the other Courts, the want of which is now very

much felt." Again, he says, "Hitherto it has not been much the custom to refer to precedent; and for aught the Judges of the Court may know, the same points may have been decided over and over again, and perhaps not always the same way. It is obvious, that having something like a system established would tend to abridge the labours of the Civil Courts."[1]

Although decided cases are now occasionally referred to in the Courts as precedents, it is by no means a general practice; and though this is to be deplored, it may be in some measure accounted for, by the difficulty which exists in consulting the Reports to which I have already alluded. It is obvious that the employment of a Digest of Cases removes this difficulty.

It appears to me, that in no instance is the maxim "*stare decisis*" so imperative or so peculiarly adapted to the circumstance as when applied to the laws administered in India, since the practice of the Courts is unsettled, and not easily to be ascertained, and in some instances their jurisdiction is ill-defined, and encompassed with doubt and difficulty; whilst in questions of Native, and especially of Hindú law, a reference to the law officers is generally unsatisfactory. In speaking of such references, Sir William Jones long since observed—"I could not with any conscience concur in a decision merely on the written opinion of native lawyers, in any cause in which they could have the remotest interest in misleading the Court; nor, how vigilant soever we might be, would it be very difficult for them to mislead us; for a single obscure text, explained by themselves, might be quoted as express authority, though perhaps in the very book from which it was selected it might be differently explained, or introduced only for the purpose of being exploded."[2] And again, Sir Francis Macnaghten says, alluding to the Pandits—"Native lawyers may not be deserving of the blame which is imputed to them; but there are instances of their partiality and tergiversation, which cannot be palliated or denied. Nothing but an ascertainment of the law can

[1] Selections from the Records of the East-India House, Vol. II. p. 20.

[2] Letter from Sir W. Jones, dated March 19, 1788. Sir W. Jones' Works, Vol. III. p. 74.* 4to. Lond. 1799.

prove a corrective of this evil."[1] There can be no doubt but that the native law-officers, as a body, are both learned and respectable, and far above suspicion of corruption; but a mere knowledge of texts, however extensive such knowledge may be, is most often quite insufficient for the purpose of arriving at a conclusion; and it is perhaps too much to expect from an Indian education, that the law-officers should possess and exercise the discrimination and impartiality which belong more nearly to the province of a Judge. "The interminable and troubled sea of Hindú jurisprudence," says an accomplished author, "is sure to present something for the support of any opinion which it may be desirous to keep afloat for the purpose of temporary convenience[2]"—and thus the ignorance or partiality of the law-officers may always be supported, and seemingly justified, by quotations from the commentators, which, taken separately, are perhaps diametrically opposed to the actual true state of the law, only to be ascertained by fuller investigation and a comparison of all the conflicting authorities. The last-mentioned writer gives it as his deliberate opinion that "the speculations of commentators have done much to unsettle the Hindú law; and the venality of the Pundits has done more." And again, "to the Pundits is chiefly attributable the perplexity of the system which it is their province to expound."[3]

These inconveniences of a reference to the native law-officers would in a great measure be obviated by the existence of a Digest of Decisions, which would frequently supersede, and generally controul, such a reference; since in all cases where a point of native law has been already determined by men who have made the study of that law the work of their lives, and who have brought to the task the advantages of a liberal education, such determination would at once present itself, and be

[1] Sir Francis Macnaghten's Considerations on the Hindú Law, Pref. p. xi.

[2] Sir W. Macnaghten's Principles and Precedents of Moohummudan Law, Pref. p. xx. note.

[3] Sir W. Macnaghten's Principles and Precedents of Hindú Law, Vol I. Pref pp. iv. v.

sufficient to fix the vacillating mind of a doubting Judge; whilst the native law-officers would hesitate before they advanced opinions, or quoted authorities, at variance with the principles laid down by European Judges of established reputation as native lawyers. No one will for a moment dispute, that in any question of Hindú law the word of the illustrious Henry Colebrooke is worth the exposition of a thousand Pandits.

Thus a sufficiently perfect Digest of Cases would become, not only a guide for the Judge and those who practise in the Courts, but a check upon the law-officers, and a touchstone of their knowledge and honesty, which might be in the hands of every one.

The practice of abiding by precedent is perfectly recognized both by the Hindú and the Muhammadan laws. The text of Menu—"If it be asked, how the law shall be ascertained, when particular cases are not comprised under any of the general rules, the answer is this: That which well-instructed Brahmans propound shall be held incontestable law[1]"—is, to the Hindú, divine authority for deferring to precedent; and it is perhaps solely on account of the metaphysical tendency of the Indian mind, which has always interfered with the mere practical record of mundane matters, that we do not possess collections of decisions by the more ancient lawyers, which would have been in most cases as conclusive, as they would be desirable in all. With regard to the Muhammadan law, one of its chief foundations, the Sunnah and Hadís, may be looked upon as one great body of precedent, a large portion consisting of decisions passed by the Prophet on questions relating to the religion and law which he promulgated. In addition to this, the numerous collections of the Fatwas of celebrated lawyers form a mass of precedent hardly surpassed, in bulk at least, in the legal literature of any nation, and constantly referred to as authoritative in all Muhammadan Courts of Justice.

I may be excused in thus insisting upon the use, and dwelling upon the application, of a Digest of Cases, inasmuch as no such work, so far as the law of India is concerned, exists at

[1] Menu, Book XII. v. 108.

present; and most probably many of the Judges, and a large majority of the practitioners, in the Courts where that law is administered, are unaware of the infinite utility and saving of time and labour which has resulted from the extensive introduction of works of the same nature in this country. I humbly hope that my imperfect attempt at supplying the deficiency in India may be partially productive of the same benefits, and render a similar prefatory description unnecessary on the future appearance of works of a like description.

In this Introduction to the Digest, in order that the reader may more fully understand the arrangement of the work, and the application of the cases, it will be necessary to give an account of the Courts of Judicature in India; of the manner in which Appeals from those Courts are instituted and prosecuted to a hearing before the Judicial Committee of the Privy Council in England; and of the different laws administered in the various Courts.

For this purpose I shall divide the subject matter of the following pages into six distinct sections, giving the history of the Courts of Judicature, and the systems for the administration of justice, from their origin down to the present time, and a detailed account of the actual constitution of the Courts, and their powers and jurisdictions as they now exist. The subject of Appeals to England, and the laws peculiar to India, will also be treated historically; and, in addition, I shall, in the former case, enter fully into the mode of procedure in this country with regard to Appeals to Her Majesty in Council; and in the latter, at the risk of prolixity, I shall describe at some length the sources whence the native laws are derived, and the works from which a knowledge of them may be most readily attained. I shall conclude by enumerating the different collections of Reports which have furnished the materials for the Digest, and describe the plan I have adopted in the general arrangement of the work.

Before entering upon the particular description of the Courts, it will be as well to premise that the inhabitants of India may, for judicial purposes, be classed into—

1. British-European subjects and their legitimate descendants.

2. Hindús.

3. Muhammadans.

4. Other proper natives of Asia, being neither Hindús, Muhammadans, nor Christians.

5. Portuguese, Armenian, and other Christians, of native or foreign extraction, together with half-casts, or illegitimate children of British subjects by native mothers.

The Courts in which civil and criminal justice is administered to these several classes are of two distinct descriptions, viz.—

1. The Courts established under, and by, the Statutes and Charters of Justice granted by Royal authority, and which are presided over by Judges appointed by Her Majesty. These are commonly called the Queen's Courts.

2. The Courts established by the authority of, and presided over by Judges appointed by, the Honourable East-India Company, and which are usually denominated the Sudder and Mofussil Courts, the Company's Courts, or the Courts for the Provinces.

I shall treat of these two descriptions of Courts respectively in separate sections.

I. HER MAJESTY'S COURTS OF JUDICATURE.

1. The Supreme Courts of Judicature.

(1) History of the Supreme Courts, their Powers, and Jurisdiction.

The earliest power emanating from the Crown for the administration of justice in India dates as far back as the reign of James I., who, by Charter granted in the year 1622, authorised the East-India Company to chastise and correct all English persons residing in the East Indies and committing any misdemeanour, either with martial law or otherwise.

The first authority, however, for the introduction of British law into India was granted by Charles II., who, by Royal Charter dated the 3d of April 1661, gave to the Governor and Council of the several places belonging to the Company in

the East Indies power to exercise therein civil and criminal jurisdiction "according to the laws of the kingdom;" and in the subsequent grants to the Company of the islands of Bombay and St. Helena, in the years 1669 and 1674, the Company were empowered to make laws and constitutions for the good government of the islands and their inhabitants; and to impose punishments and penalties, extending to the taking away life or member when the quality of the offence should require it, so that the punishment and penalties were consonant to reason, and not repugnant to, but as near as might be agreeable to the laws of England. The Governor and Company, or Governor and Committees of the Company, were also empowered to appoint Governors and other agents for the said islands, to be invested with a power of ruling, correcting, and punishing His Majesty's subjects in the said islands, according to justice, by Courts, Sessions, and other forms of judicature, like those established in England, by such Judges and officers as should be delegated for that purpose.

An amended Charter was granted by Charles II. to the Company in 1683, which empowered the Governor and Council to establish Courts of Judicature at such places as they might appoint, to consist of one person learned in the civil laws, and two merchants, and to decide according to equity and good conscience, and according to the laws and customs of merchants.

These provisions were continued in the Charter granted by James II. in 1686; and a similar power was given to the new East-India Company by the Charter of the 10th William III., granted in Sept. 1698.

In the year 1726 the Court of Directors represented by petition to King George the First—"That there was great want at Madras, Fort William, and Bombay, of a proper and competent power and authority for the more speedy and effectual administering of justice in civil causes, and for the trying and punishing of capital and other criminal offences and misdemeanours." Accordingly, the then existing Courts were superseded, and the East-India Company were empowered by Royal Charter, granted in 1726 the 13th year of the reign of King George I., to establish at each of the three settlements a

Court, consisting of a Mayor and nine Aldermen, to be a Court of Record, and to try, hear, and determine all civil suits, actions, and pleas between party and party. From these Courts an appeal lay to the Governors and Councils, and thence to the King in Council, in causes involving sums above the amount of 1000 pagodas.[1] This same Charter also constituted Courts of Oyer and Terminer at each settlement, consisting of the Governors and Councils, for the trial of all offences, except high treason, committed within the towns of Madras, Bombay, and Calcutta, or within any of the Factories subordinate thereto, or within ten miles of the same; and the Governors and Councils were constituted Justices of the Peace, and were authorised to hold Quarter Sessions. Under this Charter all the common and statute law at that time extant in England was introduced into the Indian Presidencies.[2]

The Mayor's Court, which had been established at Madras, was abolished on the capture of that place by the French under Labourdonnais in the year 1746; but the town having been restored to the English in 1749 by the treaty of Aix-la-Chapelle, the Directors of the East-India Company represented to the King in Council that "it would be a great encouragement to persons to come and settle at that place, if a proper and competent judicial authority were established there;" and further, that it had been found by experience that there were some defects in the Charter of 1726.

Under these circumstances, King George II. granted a new Charter in the year 1753, re-establishing the Mayors' Courts at Madras, Bombay, and Calcutta, with some not very material alterations. By this Charter these Courts were limited in

[1] This is the earliest use of the word *pagoda*, applied as a designation of value in money out of the limits of Madras. It afterwards found its way into the Bengal Charter of Justice, although the pagoda is a Madras coin, and was never at any time current in Bengal. The amount appealable to the Sovereign in Council has been altered, and fixed at the sum of 10,000 Company's rupees for all the Courts in India, by the Order in Council of the 10th of April 1838.

[2] Clarke's Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal, Pref. p. iv. 8vo. Calc. 1829.

their civil jurisdiction to suits between persons not Natives of the said several towns; and suits between Natives were directed not to be entertained by the Mayor's Courts, unless by consent of the parties. The jurisdiction of the Government Courts in criminal cases was also limited to offences committed within the several towns and the Factories or places subordinate thereto, omitting the words, "or within ten miles of the same," contained in the previous Charter. At the same time, and by the same Charter, Courts of Requests were established at Madras, Bombay, and Fort William, for the determination of suits involving small pecuniary amounts. These last Courts will be treated of separately.

The Seventh Report of the Committee of Secrecy, appointed to inquire into the state of the East-India Company, after a detailed description of the Courts of Judicature in Bengal, observes upon the constitution and defects of the Mayors' Court, and remarks, "that although it is bound to judge, at least where Europeans are concerned, according to the laws of England, yet the Judges are not required to be, and in fact have never been, persons educated in the knowledge of those laws by which they must decide; and that the Judges were justly sensible of their own deficiency; and that they had therefore frequently applied to the Court of Directors to lay particular points respecting their jurisdiction before counsel, and to transmit the opinion of such counsel to be the guide of their conduct."

Upon this Report the 13th Geo. III. c. 63, was passed. The Bill had met with considerable opposition on the part of the Company, but such opposition was fruitless: it was carried by an overwhelming majority in the House of Commons on the 10th of June 1773, and on the 20th of June it passed the Lords without opposition, and received the Royal Assent on the following day. The 13th section of this Statute empowered His Majesty to erect and establish a Supreme Court of Judicature at Fort William in Bengal, to consist of a Chief Justice and three other Judges, being barristers of England or Ireland of not less than five years' standing, to be named and appointed from time to time by His Majesty, his heirs and successors. The same section declared that the said Supreme

Court should have full power and authority to exercise and perform all Civil, Criminal, Admiralty, and Ecclesiastical jurisdiction; and to form and establish such rules of practice, and such rules for the process of the said Court, and to do all such other things as should be found necessary for the administration of justice and the due execution of all or any of the powers which, by the said Charter, should or might be granted or committed to the said Court; and also should be at all times a Court of Record, and should be a Court of Oyer and Terminer, and Gaol Delivery, in and for the said town of Calcutta and Factory of Fort William in Bengal aforesaid, and the limits thereof, and the Factories subordinate thereto. The Governor-General and Council, and the Judges of the Supreme Court, were, by the 38th section of the same Act, authorised to act as Justices of the Peace, and to hold Quarter Sessions.

The Supreme Court of Judicature at Fort William in Bengal was accordingly established under the above Statute, by Royal Charter dated the 26th of March 1774; and it is under this Charter that the Supreme Court is now held. The Bengal Charter of Justice will be found inserted in the second volume of this work; but it will be useful here to state shortly some of its provisions. By the 13th section, the Supreme Court at Calcutta was empowered to try and determine all actions and suits arising in Bengal, Behar, and Orissa, and all pleas, real, personal, or mixed, arising against the United Company and the Mayor and Aldermen of Calcutta, and against any of the King's subjects resident in Bengal, Behar, and Orissa, or who should have resided there, or should have debts, effects, or estates, real or personal, within the same, and against the executors and administrators of such subjects, and against any other person who should at the time of such action being brought, or when any action should have accrued, be or have been employed in the service of the said Company, or the said Mayor and Aldermen, or of any other of the King's subjects, and against all other persons, inhabitants of India, residing in Bengal, Behar, or Orissa, upon any contract or agreement in writing with any of the King's subjects, where the cause of action should exceed the sum of 500 current rupees, and when such inha-

bitants should have agreed in the said contract, that, in case of dispute, the matter should be determined in the said Supreme Court. The same section limited the jurisdiction thus given as follows; viz. that the said Court should not try any suit against any person who should never have been resident in Bengal, Behar, or Orissa, or against any person who should, at the time of action brought, be resident in Great Britain or Ireland, unless such suit or action against such person so then resident in Great Britain or Ireland should be commenced within two years after the cause of action arose, and the sum to be recovered should not be of greater value than 30,000 rupees. By the 18th section of the Charter the Supreme Court was constituted a Court of Equity, as the Court of Chancery in England. The 19th section constituted it a Court of Oyer and Terminer, and Gaol Delivery, for Calcutta and Fort William, and the Factories subordinate thereto, with power to summon grand and petit juries, and to administer criminal justice as in the Courts of Oyer and Terminer in England, giving it jurisdiction over all offences committed in Bengal, Behar, and Orissa, by any subject of His Majesty, or any person in the service of the United Company, or of any of the King's subjects. The 22d section empowered the Supreme Court to exercise Ecclesiastical jurisdiction in Bengal, Behar, and Orissa, as the same was exercised in the diocese of London, and to grant probates and administrations to the estates of British subjects dying within the said provinces. The 25th section empowered the Court to appoint guardians of infants and of insane persons, and of their estates; and by the 26th section the said Supreme Court was appointed to be a Court of Admiralty in and for the provinces of Bengal, Behar, and Orissa, and to hear and determine all causes and matters, civil and maritime, and to have jurisdiction in crimes maritime, according to the course of the Admiralty in England. An appeal lay, under sections 30—33, from the decisions of the Supreme Court at Fort William to the King in Council. This portion of the Charter will be more particularly noticed hereafter in the section treating of Appeals from the Courts in India to this country.

Shortly after the grant of this Charter arose those unfortu-

nate contentions between the Governor-General and Council and the Judges of the Supreme Court at Calcutta, which, whoever may have been in the wrong, were certainly very discreditable to both parties. The unanimity which existed, however, between the disputants in every measure throughout these unhappy disagreements, proves that the difference arose, not from personal feelings, or from a desire of an undue extension of their several powers, but from a defect in the law, arising from the obscurity of the Statute, of which it has been well remarked, "that the Legislature had passed the Act of the 13th Geo. III. c. 63, without fully investigating what it was that they were legislating about; and that if the Act did not say more than was meant, it seemed at least to have said more than was well understood."[1]

The Legislature accordingly intervened; and, by the preamble to the 21st Geo. III. c. 70, and sections 2, 8, 9, and 10, of that Act, explained and defined the jurisdiction of the Supreme Court, declaring that the said Court had no jurisdiction over the Governor-General and Council for any act or order made or done by them in their public capacity; that if any Natives should be impleaded in the Supreme Court for any act done by order of the Governor and Council in writing, the said order might be given in evidence under the general issue, and should amount to a sufficient justification; that the Supreme Court should have no jurisdiction in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the Regulations of the Governor-General and Council; that no person should be subject to the jurisdiction of the Court by reason of being a landowner, landholder, or farmer of land or of land-rent; that no person should be so subject to the jurisdiction of the said Court, by reason of his being employed by the Company or by the Governor-General and Council, or on account of his being employed by a native

[1] Letter from the Judges of the Supreme Court at Calcutta, dated Oct. 16, 1830. Fifth Appendix to the Third Report of the Select Committee of the House of Commons, 1831, p. 1284, 4to. edit.

of Great Britain, in any matter of dealing or contract between party or parties, except in actions for wrongs or trespasses, and also except in civil suits by agreement of parties, in writing, to submit the same to the decision of the said Court. Section 17 of this important Act also reserved their peculiar laws to Hindús and Muhammadans in certain civil matters, as hereafter will be noticed; and the 24th section provided that no action for wrong or injury should lie in the Supreme Court against any person whatsoever exercising a judicial office in the Country Courts, for any judgment, decree, or order of the said Court, nor against any person for any act done by or in virtue of the order of the said Court.

By the 29th section of the 26th Geo. III. c. 57, all servants of the East-India Company, and all His Majesty's subjects resident in India, were made subject to the Courts of Oyer and Terminer, and Gaol Delivery, for all criminal offences committed in any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the Company's trade.

The 30th section of the same Act declared that the Governor or President and Council of Fort St. George, in their Courts of Oyer and Terminer, and Gaol Delivery, and also the Mayor's Court at Madras, according to their respective judicatures, should have jurisdiction, as well Civil as Criminal, over all British subjects whatsoever residing in the territories of the East-India Company on the Coast of Coromandel, or in any other part of the Carnatic or in the Northern Circars, or within the territories of the Soubah of the Deccan, the Nabob of Arcot, or the Rajah of Tanjore.

By the 33d Geo. III. c. 52. s. 67, all His Majesty's subjects, as well servants of the Company as others, were declared to be amenable to all Courts of Justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all criminal offences committed in the territories of any native prince or state, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been committed

within the territories directly subject to and under the British Government in India.[1]

Section 156 of the latter Act extended the Admiralty jurisdiction of the Supreme Court at Calcutta given under the Charter; and the Court was empowered, by means of juries of British subjects[2], to try all offences committed on the high seas.

By the 37th Geo. III. c. 142. s. 1, the number of Judges of the Supreme Court at Calcutta was limited to three.

The Mayors' Courts at Madras and Bombay existed until the year 1797, when they were abolished and superseded by Recorders' Courts, established under the 37th Geo. III. c. 142. These Recorders' Courts consisted of the Mayor, three Aldermen, and a Recorder, who was to be appointed by His Majesty; and their jurisdiction extended to Civil, Criminal, Ecclesiastical, and Admiralty cases. They were empowered to establish rules of practice, and they were to be Courts of Oyer and Terminer, and Gaol Delivery, for Fort St. George and Bombay; and their jurisdiction was to extend over British subjects resident within the British territories subject to the Governments of Madras and Bombay respectively, as well as those residing in the territories of native princes in alliance with those Governments. Their jurisdiction was also brought within the restrictions of the 21st Geo. III. c. 70; the laws of the Hindús and Muhammadans were reserved to Natives; and an appeal lay from their decisions to the King in Council.

The Recorder's Court at Madras was abolished by the 39th and 40th Geo. III. c. 79, and a Supreme Court of Judicature was erected in its place, consisting of a Chief Justice and two puisne Judges. The powers vested in the Recorder's Court were transferred to, and to be exercised by, the Supreme Court, which was also directed to have the like jurisdiction, and to be invested with the same powers, and subject to the same restrictions, as the Supreme Court of Judicature at Fort William in Bengal.

[1] This section is a re-enactment of the 44th section of the 24th Geo. III. c. 25, which was passed in 1784.

[2] Natives may now sit on juries.

Letters patent, granting a Charter of Justice to the Supreme Court at Madras, were issued on the 26th of Dec. 1801.

By sections 99, 100, of the 53d Geo. III. c. 155, all persons whatsoever were authorised to prefer, prosecute, and maintain, in His Majesty's Courts at Calcutta, Madras, and Bombay, all manner of indictments, informations, and suits whatsoever for enforcing the laws and Regulations made by the Governor-General and Governors in Council, or for any matter or thing whatsoever arising out of the same. The Advocate-General at each of the several Presidencies was also empowered to exhibit informations in the said Courts against any person or persons whatsoever for any breach of the revenue-laws or Regulations of any of the said Governments, or for any fines, penalties, forfeitures, debts, or sums of money, committed, incurred, or due by any such person or persons in respect of any such laws or Regulations. Section 107 provided that where, by the Regulations, it would be competent to a party to prefer an appeal to the Court of highest appellate jurisdiction in the provinces, British subjects residing or trading, or occupying immoveable property within the provinces, should be entitled to prefer, instead of such appeal, an appeal to His Majesty's Courts of Judicature at the several Presidencies. This section, however, has been since repealed by Act XI. of 1836; and no such right of appeal to the Supreme Courts now exists. Section 110 of the same Statute, after stating that doubts had been entertained whether the Admiralty jurisdiction of His Majesty's Courts at Calcutta, Madras, and Bombay, extended to any persons but those amenable to their ordinary jurisdiction, empowered the said Courts to take cognizance of all crimes perpetrated on the high seas, by any person or persons whatsoever, in as full and ample a manner as any other Court of Admiralty jurisdiction established by His Majesty's authority in any colony or settlement whatsoever belonging to the Crown of the United Kingdom.

The 4th Geo. IV. c. 71, passed in 1823, authorised the abolition of the Recorder's Court at Bombay, and the establishment of a Supreme Court of Judicature in its stead, to consist of the like number of Judges as the Supreme Court at Fort William in Bengal, and to be invested with the same powers

and authorities as the said Supreme Court, and to have a similar jurisdiction and the same powers, and to be subject to the same limitations, restrictions, and controul.

The powers of the Supreme Courts at Madras and Bombay were placed upon an equal footing with those of the Supreme Court at Calcutta, in an explicit manner, by the 17th section of this Act, which declared that it should be lawful for the Supreme Court of Judicature at Madras, within Fort St. George, and the town of Madras, and the limits thereof, and the Factories subordinate thereto, and the territories subject to or dependent upon the Government of Madras; and for the Supreme Court of Judicature at Bombay, within the town and island of Bombay, and the limits thereof, and the Factories subordinate thereto, and the territories subject to or dependent upon the Government of Bombay, and the said Supreme Courts respectively were thereby required, within the same respectively, to do, execute, perform, and fulfil, all such acts, authorities, duties, matters, and things whatsoever, as the Supreme Court of Fort William was or might be authorised, empowered, or directed to do, execute, perform, and fulfil, within Fort William in Bengal, or the places subject to or dependent upon the Government thereof. Letters patent, granting a Charter of Justice to the Supreme Court at Bombay, were issued on the 8th of Dec. 1823.

It may be remarked, that although, by the 4th Geo. IV. c. 71, the Supreme Courts at Madras and Bombay are invested with the same powers as the Supreme Court at Fort William, there is no similar provision in any Statute in favour of the latter Court, that it shall exercise the same powers with the Supreme Courts at the other Presidencies.

It is unnecessary to enter more fully into the powers of the Supreme Courts at Madras and Bombay, as the Charters under which they are now held are founded upon that of the Supreme Court at Calcutta, and upon the provisions of the 21st Geo. III. c. 70; and the Charters themselves will be found printed in the Appendix to this work.

There are some variations, however, in these Charters, that give rise to considerable doubt and difficulty, and these may

be shortly alluded to. In the first instance, there is a difficulty with regard to the powers which the Justices of the Courts were to possess in the provinces as conservators of the peace; but this will more appropriately be noticed in another place. Again, the Supreme Court at Bombay is prohibited, by the 30th section of its Charter, from interfering in any matter concerning the revenue, even within the town of Bombay, which is in direct contradiction to the 53d Geo. III. c. 155. ss. 99, 100. Natives are also exempted from appearing in the Supreme Courts at Madras and Bombay, unless the circumstances be altogether such as that they might be compelled to appear in the same manner in a Native Court; a provision which seems to place the jurisdiction of these Supreme Courts in such cases entirely at the discretion of the Government, who regulate the Company's Courts as they please. This appears to be inconsistent with the duties assigned to the Courts by the Statutes. Lastly, with regard to crimes maritime, the 54th section of the Bombay Charter of Justice restricts the powers of the Supreme Court to such persons as would be amenable to it in its ordinary jurisdiction; which is again at variance with the 53d Geo. III. c. 155. s. 110, if the ordinary jurisdiction, as is to be inferred from the other portions of the Charter, be limited to British subjects.

By the Statute 9th Geo. IV. c. 74. ss. 7, 8, 9, 56, and 70, provisions are made, without any distinction between Native and British persons, for the trial by the Supreme Courts of accessories before or after the fact to any felony, and of any accessory before or after the fact, after conviction of the principal, though the principal be not attainted of such felony; for the trial of murder or manslaughter, where the death, or the cause of death only, happens within the limits of the East-India Company's Charter; and for the trial of bigamy, whenever the offender is apprehended or found within the jurisdiction of the Courts, although the offence may have been committed elsewhere.

An appeal lies from the decisions of the Supreme Courts of Judicature to Her Majesty in Council; a subject which will be more especially treated of in a separate section.

The jurisdiction of the Supreme Courts of Judicature in India may be stated shortly to extend over the following classes :—

1. British subjects throughout India, in all matters civil and criminal.

2. The inhabitants of Calcutta, Madras, and Bombay, within fixed limits, whether Natives or others, in all matters civil and criminal; but Natives in some civil matters to have justice administered to them according to the Hindú or Muhammadan law.

3. Native subjects, servants of the East-India Company, or of any British subject, for acts committed as such, with limitations in certain civil matters.

4. Native subjects, in civil matters, for transactions in which they have bound themselves by bond to be amenable to the Supreme Courts.

5. All persons whatsoever for crimes maritime.

The Supreme Courts are, by their Charters, vested with five distinct jurisdictions, Civil, Criminal, Equity, Ecclesiastical, and Admiralty; and they are enjoined to accommodate their process, rules, and orders, to the religion and manners of the Natives, so far as the same can be done without interfering with the due execution of the laws and the attainment of justice.

It would be a difficult task to define more exactly the powers and jurisdictions of Her Majesty's Supreme Courts in India, given by the Statutes and Charters above enumerated; and questions are constantly arising on these important subjects, which can only be reduced to certainty by the repeated decisions of the Courts, or by fresh enactments. I cannot more appropriately conclude the present remarks upon the Supreme Courts, than by quoting the observations made some years since by Sir Charles Grey and Sir Edward Ryan, animadverting upon the uncertainty of the legislation with respect to the powers and jurisdictions of those Courts, since many, if not most, of the difficulties and doubts they complained of still remain. "In one way or another," write the learned Judges, "sometimes by the mention of some qualification of the powers

of the Court occurring in an Act or Charter, which has been afterwards insisted upon as a recognition; sometimes by a vague recognition of counter institutions, which have been already set on foot without any express authority, and which afterwards, upon the strength of the recognition, are amplified and extended; sometimes by the jurisdiction of the Supreme Court being stated in such a way as to leave it to be inferred that the *expressio unius* is the *exclusio alterius;* sometimes by provisions which, to persons unacquainted with India, may have appeared to be of little consequence, but which in reality involve a great deal; sometimes when Parliament has provided that new Courts should be established upon the same footing as the old one, by something finding its way into the constitution of the new Courts which is essentially different from the old, and would be destructive of their efficiency;—in some or all of these ways the Supreme Courts have come to stand at last in circumstances in which it is a very hard matter to say what are their rights, their duties, or their use."[1]

(2) Law administered in the Supreme Courts.

The law which now obtains in the Supreme Courts at the three Presidencies may be classed under seven distinct heads—

1. The Common law, as it prevailed in England in the year 1726, and which has not subsequently been altered by Statutes especially extending to India, or by the Acts of the Legislative Council of India.

2. The Statute law which prevailed in England in 1726, and which has not subsequently been altered by Statutes especially extending to India, or by the Acts of the Legislative Council of India.

3. The Statute law expressly extending to India, which has been enacted since 1726, and has not been since repealed, and

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[1] Letter from the Judges of the Supreme Court at Calcutta, dated 16th of Oct. 1830. Fifth Appendix to the Third Report from the Select Committee of the House of Commons, 1831, p. 1296, 4to. edit.

the Statutes which have been extended to India by the Acts of the Legislative Council of India.[1]

4. The Civil law as it obtains in the Ecclesiastical and Admiralty Courts in England.

5. Regulations made by the Governor-General in Council and the Governors in Council previously to the 3d and 4th Will. IV. c. 85, and registered in the Supreme Courts, and the Acts of the Legislative Council of India made under the 3d and 4th Will. IV. c. 85.

6. The Hindú law in actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which a Hindú is a defendant.

7. The Muhammadan law in actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which a Muhammadan is a defendant.

The three last species of law are peculiar to the Courts in India, and will be described in a subsequent section.

2. The Court of the Recorder of Prince of Wales' Island, Singapore, and Malacca.

The island of Singapore, and the town and fort of Malacca,

[1] The Statute law affecting India and the East-India Company is to be found collected in various works. The best collection is entitled, Charters and Statutes relating to the East-India Company, from Elizabeth, 1600, to the 56th Geo. III., 1816. 4to. Lond. 1817. The latest work on the subject, but which omits much that is important, is entitled, The Law relating to India and the East-India Company. 4to. Lond. 1842. (Third Edit.). This compilation extends to the 5th Vict. c. 5. The student will find a vast quantity of information regarding the Statute law affecting India in Auber's Analysis of the Constitution of the East-India Company, and of the Laws passed by Parliament for the government of their affairs both at home and abroad. Together with a Supplement. 8vo. Lond. 1826—1828. Auber's Analysis is a most valuable work both for study and reference, and should be in the hands of all who wish to acquire a knowledge of the law of India. A useful tabular statement of the Statutes relating to Indian affairs will also be found appended to Annand's Brief Outline of the existing system of the Government of India. 4to. Lond. 1832.

were ceded to the British by His Majesty the King of the Netherlands, by treaty, on the 17th of March 1824, and were afterwards transferred to the Honourable East-India Company by the 5th Geo. IV. c. 8. The 6th Geo. IV. c. 85. s. 21, empowered the said Company to annex Prince of Wales' Island to those possessions; and the annexation was accordingly effected, and the whole formed into a Government, entitled "The Governor and Council of Prince of Wales' Island, Singapore, and Malacca."

In pursuance of the 19th section of the last mentioned Act of Parliament, Letters patent were issued, dated the 27th of November 1826, by which a Court of Judicature was constituted; and it was directed that it should consist of the Governor and Resident Councillor, and one other Judge, to be styled the Recorder.

This Court was to be a Court of Record, and was empowered by its Charter to exercise Civil, Criminal, and Ecclesiastical jurisdiction, and to be a Court of Oyer and Terminer, and Gaol Delivery. The Court was also empowered to reprieve execution of any capital sentence, and to substitute a lesser punishment; and the Judges were constituted Justices of the Peace, and were authorised to hold general and quarter sessions. They were also empowered to appoint by commission covenanted servants of the Company to act as Justices of the Peace within the said settlement.

An appeal lay from the decisions of the Recorder's Court to the King in Council.[1]

In addition to the jurisdictions above mentioned, an Admiralty jurisdiction was granted to the Recorder's Court by the 6th and 7th Will. IV. c. 53 and the Letters patent issued in pursuance of that statute, similar to that exercised by the Supreme Court at Fort William in Bengal.[2]

[1] An abstract of the Charter of the Court will be found in The Law relating to India and the East-India Company, p. 570, *et seq.*

[2] An abstract of the Admiralty Charter of the Recorder's Court is inserted in Smoult and Ryan's Rules and Orders of the Supreme Court at Fort William in Bengal, Vol. II. App. p. cvii. I have omitted the Charters of the Recorder's Court in the Appendix to this work, since the provisions they contain are materially the same as those of the Supreme Courts of Judicature, and the Court itself is comparatively of minor importance.

Prince of Wales' Island is now, with all the eastern settlements, under the Presidency of Bengal.

3. Courts of Requests.

Courts of Requests were established at Madras, Bombay, and Fort William, by the Charter of George the Second, dated the 8th of Jan. 1753, by which they were empowered to determine suits where the debt, duty, or matter in dispute should not exceed 5 pagodas.

The jurisdiction of these Courts of Requests was extended by the 37th Geo. III. c. 142, by the 30th section of which Statute they were authorised to hear and determine all actions, plaints, and suits, in which the matter in dispute should not exceed the value of 80 current rupees, and to award execution thereupon for the debt or sum adjudged to be due. A further extent of the jurisdiction of the Courts of Requests at Calcutta and Madras took place under the 39th and 40th Geo. III. s. 17, which, after stating that great inconvenience had resulted from the manner in which the Courts of Requests for the recovery of small debts in the respective settlements of Fort William and Fort St. George were constituted, enacted that it should be lawful for the Governor-General and Council of Fort William, and the Governor and Council of Fort St. George, to extend the jurisdiction of the said Courts to an amount not exceeding 400 sicca rupees, and to frame new rules and orders, and to establish new forms of proceeding, for new modelling, altering, and reforming the constitution and practice of the said Courts; and by their Proclamation to declare and notify such new constitution, rules, orders, and forms of proceeding, and the time from whence they were to have force and effect.

The first Proclamation under this Act was made and published at Fort William on the 18th of March 1802, declaring and defining the jurisdiction, powers, and practice of the Court of Requests. This Proclamation appointed three Commissioners for the recovery of small debts, and extended the jurisdiction of the Court to the sum of 100 sicca rupees. Two

other Proclamations were afterwards made, extending the jurisdiction of the Court of Commissioners successively to 250 and 400 sicca rupees. The latter, which also increased the number of Commissioners to four instead of three, was published on the 29th of Oct. 1819.[1]

In the year 1839 the Legislative Council of India, by Act XXVII. of that year, authorised the Court of Requests for the town of Calcutta, in certain cases, to execute decrees passed by the Judge of the Dewanny Adawlut of the Zillah Twenty-four Pergunnahs.

In the year 1844 a draft Act was submitted to the Legislative Council for abolishing the Court of Requests at Calcutta, and for substituting in its place a Court for the exercise of civil jurisdiction in the city of Calcutta, to be called the Subordinate Civil Court for the city of Calcutta[2]; but the proposed Act never received the sanction of Government.

Doubts having arisen as to the powers of the Commissioners of the Court of Requests at Calcutta, Act XII. of 1848 was passed for the better defining the jurisdiction of the said Court. By this Act it was declared that all proceedings had, or to be had, in pursuance of the above-mentioned Proclamations, by the said Commissioners were valid; and all powers and authorities given to the said Commissioners by the first Proclamation were extended to all matters which they were authorised to determine by the other Proclamations. It was further enacted, that the said Commissioners might sit together or apart, and hold one, or two, or three separate Courts sitting at the same time, or at different times; that all rules, forms of procedure, and tables of fees, formerly and then used or established in the said Court, should be valid, notwithstanding the omission to procure the allowance of the Supreme Court, or the non-printing and non-publication of the same; and that all summonses and other process issued by the said Commis-

[1] For these Proclamations see Smoult and Ryan's Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal. Vol. II. App. p. xi. *et seq.*

[2] Special Reports of the Indian Law Commissioners. 1845, p. 45.

sioners, or any of them, whether issued before or after the passing of the said Act, should be deemed to be valid and effectual in law, on whatsoever day the same should have been made returnable.

The Courts of Requests at the three Presidencies were, by the Charters of Justice, and by the said Proclamations, made subject to the order and controul of the Supreme Courts, in the same manner as the inferior Courts in England are, by law, subject to the order and controul of the Court of Queen's Bench.

Courts in the nature of Courts of Requests were directed to be established in the Settlement of Prince of Wales' Island, Singapore, and Malacca, by the Charter of Justice under which the Recorder's Court was constituted at that Settlement. These Courts were to determine suits not exceeding in value thirty-two dollars, and were to be subject to the order and controul of the Recorder's Court.

4. Insolvent Courts.

The Supreme Courts at Fort William and Madras, and the Recorder's Court at Bombay, were empowered, by the 23d section of the 39th and 40th Geo. III. c. 79, to make rules and orders, extending to insolvent debtors in India the relief intended by the 32d Geo. II. c. 28, commonly called the Lords' Act; and the 24th section of the same Statute ratified any rules and orders previously made by the said Courts in the three Presidencies for the relief of insolvent debtors, and confirmed the acts done under such rules and orders.

By the 1st and 2d Vict. c. 100. s. 119, it was, however, enacted, that no prisoner for debt should petition any Court for his discharge under the Lords' Act; nor is any creditor to petition any Court for the exercise of the compulsory powers of that Act against debtors.

Insolvent Courts, separate from the Supreme Courts of Judicature, were established at the three Presidencies by the 9th Geo. IV. c. 73, to be severally presided over by one of the Judges of the respective Supreme Courts. These Insolvent Courts were

empowered by the said Statute to administer oaths, and to examine witnesses on oath or affirmation, to issue commissions to take evidence, or to force the attendance of witnesses, and to examine debtors and parties capable of giving information as to their debts and estates; they were also empowered to impose fines in a summary manner, and to commit to gaol for contempt of Court, but not to award costs except under the rules of the Supreme Courts. Under the 4th section of this Act an appeal lay from the Insolvent Courts to the Supreme Courts of Judicature. It was also provided, by the 80th section, that the Supreme Courts might make rules for facilitating the relief of insolvent debtors in cases for which sufficient provision had not been made; and the 81st section declared that the said Act should remain in force until the year 1833.

It was provided by the 2d Will. IV. c. 43, that the 9th Geo. IV. c. 73 should be continued and remain in force until the 1st of March 1836; and an extension of the same Statute, to the year 1839, was enacted by the Legislative Council of India by Act IV. of 1836. Certain amendments, which it will be unnecessary to specify, were made by the 4th and 5th Will. IV. c. 79, which also provided that the schedules of insolvent debtors in India should be transmitted to the Court of Directors of the East-India Company, and be open to the inspection of creditors.

The above-mentioned Acts were all further extended by the 6th and 7th Will. IV. c. 47, the 3d and 4th Vict. c. 80, and the 9th and 10th Vict. c. 14, the last Statute extending them to the 1st of March 1847, and thence to the end of the next session of Parliament.

In the month of June 1848 the 11th and 12th Vict. c. 21 was passed to consolidate and amend the laws relating to insolvent debtors in India. This Statute repealed the 9th Geo. IV. c. 73, and the 4th and 5th Will. IV. c. 79, save as to acts then done and pending under the subsequent Statutes above enumerated. By section 2, the Courts established under the 9th Geo. IV. c. 73, were continued with the same powers as theretofore; the 73d section enacted that an appeal should lie,

as before, to the Supreme Courts; and the 76th section authorised the said Courts to make rules and regulations, and to alter and amend the same, subject to Her Majesty's approval. The schedules of insolvents were directed, by section 85, to be transmitted to England whenever it should appear that any creditors were resident out of the Company's Charter.

The 88th section of the above Statute enacted that a Court for the relief of insolvent debtors should be established at the Settlement of Prince of Wales' Island, Singapore, and Malacca, and the several powers of the said Statute were extended, with certain exceptions, to that Settlement.

5. Vice-Admiralty Courts.

By section the 25th of the 39th and 40th Geo. III. c. 79, His Majesty was empowered to issue a Commission from His High Court of Admiralty in England for the trial and adjudication of prize causes and other maritime questions arising in India, and to nominate all or any of the Judges of the Supreme Court of Judicature at Fort William in Bengal, or of the Supreme Court of Judicature to be erected at Madras, or of the Court of the Recorder at Bombay, either alone or jointly with any other persons to be named in such Commission, to be Commissioners for the purpose of carrying such Commission into execution.

The 2d Will. IV. c. 51, which was passed for the regulation of the practice and the fees in the Vice-Admiralty Courts abroad, and to obviate doubts as to their jurisdiction, enacted that there should be an appeal from such Vice-Admiralty Courts to the High Court of Admiralty in cases of costs; and their jurisdiction was defined to extend to all cases where a ship or vessel, or the master thereof, should come within the local limits of any Vice-Admiralty Court; and that it should be lawful for any person to commence proceedings in any suits for seamen's wages, pilotage, bottomry, damage to a ship by collision, contempt in breach of the regulations and instructions relating to His Majesty's service at sea, salvage, and droits of Admiralty, in such Vice-Admiralty Court, notwithstanding the cause of

action might have arisen out of the local limits of such Court, and to carry on the same in the same manner as if the cause of action had arisen within the said limits.

A separate Vice-Admiralty Court was established in Calcutta in 1822[1], but its functions are at present suspended, for no Marshal or Registrar are appointed by the High Court of Admiralty, and the Chief Justice has no authority to make any such appointments.[2] I am not aware that any Vice-Admiralty Court has ever been established at Madras or Bombay.

II. THE SUDDER AND MOFUSSIL COURTS.

THE systems for the administration of justice by the Honourable East-India Company now actually existing in the Presidencies of Bengal, Madras, and Bombay, are based upon the Regulations passed by the Governments of those Presidencies respectively in the years 1793, 1802, and 1827; the plan introduced into Bengal being the foundation of the other systems. Previously to 1793 Courts of Justice had been established in Bengal by the Governor-General and Council; and in Bombay similar Courts had been formed so early as 1799, adapted to the local circumstances from the Bengal system: at Madras, however, there were no Company's Courts until the year 1802.

In the following description of the Sudder and Mofussil Courts I purpose, though it will necessarily involve some repetition, to treat separately those of each Presidency. I shall, in the first place, after tracing shortly the rise and progress of the three Adawlut systems, describe the Courts of Civil and Criminal Judicature and the Police Establishments, as constituted respectively in the years 1793, 1802, and 1827; secondly, taking those years as starting-points, I shall enumerate the modifications and alterations that have since occurred, down to the

[1] See the Commission in Smoult and Ryan's Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal. Vol. II. App. p. i.

[2] Observations on the Judicial Institutions of Bengal, p. 29. 8vo. Lond. 1849.

present time, in a distinct order, under the heads of Civil and Criminal Judicature and Police. I shall then state concisely and generally the jurisdiction of the Courts, and the Laws administered therein; and finally, I shall set forth, by way of summary, the actual constitution of the Courts of Justice, and of the establishments of Police, as now existing in each Presidency.

The limits of this Introduction will not admit of entering into a full detail of the various modifications and alterations above alluded to. I shall therefore confine myself to those which are the most material, before proceeding to the summary account of the present systems.

1. Bengal.

(1) Rise and Progress of the Adawlut System.

The great Lord Clive, whose transcendant abilities brought the Empire of India within his grasp, secured that Empire to his country by obtaining the grant of the Dewanny for the East-India Company at the hands of the pageant Moghul Emperor. Previously to this the Nawáb Najm al Daulah, on his accession to the Masnad after the death of his father, Núr Jaafar Âlíy Khán, had entrusted the Súbahdárí to the management of a Náïb, or deputy, to be appointed by the advice and recommendation of the English; but the Firmán which conferred in perpetuity the Dewanny authority over the Provinces of Bengal, Behar, and Orissa on the East-India Company, constituted them the masters and virtual sovereigns of those Provinces; the office of Dewan implying not merely the collection of the revenue, but the administration of civil justice.

This Firmán was granted on the 12th of August 1765, and was accompanied by an imperial confirmation of all the territories previously held by the East-India Company under grants from Kásim Âlíy Khán and Jaafar Âlíy Khan, within the nominal limits of the Empire of the descendants of Tímúr. The Nizamut, or administration of criminal justice, was, at the same

time, conferred upon the Nawáb Najm al Daulah. The Dewanny grant was further recognized, by an agreement dated the 30th of September in the same year, by the Nawáb, who formally accepted his dependent situation by consenting to receive a fixed stipend of fifty-three laks of rupees[1] for the support of the Nizamut, and for the maintenance of his household and his personal expenses.

In the month of April in the following year the Nawáb held his annual Darbár for the collection of the revenue. The Prince sate as Názim; and Lord Clive, the President of the Council of Fort William officiated for the first time as Dewan. From this period the Nizamut, as well as the Dewanny, was exercised by the British Government in India through the influence possessed by the English over the Náïb Názim; the Nizamut comprising the right of arming and commanding troops, and the management of the whole of the Police of the country, as well as of the administration of criminal justice.

For some time subsequent to this assumption of power it was not, however, thought prudent, either by the authorities at home or in India, to entrust the administration of justice or the collection of the revenue to the European servants of the Company; their ignorance of the civil institutions and internal arrangements of the country rendering them, with a few bright exceptions, totally unqualified for either task. Accordingly, the administration of the provinces included in the Dewanny grant was for the present left in the hands of the native officers, an imperfect controul being exercised over them by an English Resident at the Court of the Nawáb, and by the Chief of Patna, who superintended the collections of Behar. The Zamíndárí lands of Calcutta, and the districts of Burdwán, Midnapór, and Chittagong, as well as the Twenty-four Pergunnahs, which had been ceded to the East-India Company by previous grants from the Nawábs, and which had been confirmed to them by the

[1] Copies of these Firmáns and Agreements will be found in the Appendices to Bolt's Considerations on Indian Affairs, 4to. Lond. 1772; and Verelst's View of the Rise and Progress of the English Government in Bengal, 4to. Lond. 1772.

Emperor's Firmán in August 1765, had been placed under the management of the covenanted servants of the Company ever since their cession, and this was continued; but at the same time the internal administration was carried on without alteration, as in other parts.

In 1769, when Verelst was Governor of Bengal, Supervisors were appointed for the superintendence of the native officers; and they were furnished with detailed instructions to inquire into the history, existing state, produce, and capacity of the provinces, the amount of the revenues, the regulations of commerce, and the administration of justice; they were likewise directed to make reports thereon to the Resident at the Darbár and the Chief of Patna.

These inquiries furnished ample evidence of abuses of every kind. Extortion and oppression on the part of the public officers, and fraud and evasion of the payment of just dues on the part of the cultivators, prevailed throughout our provinces; and with respect to the administration of justice, it was remarked, in a Letter from the President in Council at Fort William, that "the regular course was everywhere suspended; but every man exercised it who had the power of compelling others to submit to his decision."[1] Councils with superior authority were established at Moorshedabad and Patna in the following year, to superintend the administration of justice and the collection of the revenue, and to exercise the powers before vested in the Resident and Chief.

The glaring abuses above mentioned had continued for seven years unremedied, when, in the year 1772, the Court of Directors announced to the Government of Bengal their intention "to stand forth as Dewan, and, by the agency of the Company's servants, to take upon themselves the entire care and management of the revenues."[2]

Warren Hastings, who had already acquired a considerable reputation by his talents, and who had served with great

[1] Fifth Report from the Select Committee of the House of Commons, 1812, p. 5.

[2] Ibid.

credit in Bengal during the administration of Vansittart, and since then on the coast of Coromandel, was now Governor, he having been appointed to that important office in the preceding year. In order to carry into effect their determination, the Court of Directors appointed a Committee, consisting of the Governor and four Members of Council; and Warren Hastings and his coadjutors drew up a Report, comprising plans for the more effective collection of the revenue and the administration of justice.

This Report, which bears witness throughout to the soundness of the views entertained by the illustrious statesman who presided, gave a detailed account of the Muhammadan Law Courts; and after animadverting strongly on their inefficiency, proceeded to set forth a plan for the more regular administration of civil and criminal justice, stated to have been framed so as to be adapted "to the manners and understandings of the people and exigencies of the country, adhering, as closely as possible, to their ancient usages and institutions."[1]

This plan was adopted by the Government on the 21st of August 1772; and although the constitution of the Courts was shortly afterwards completely altered, many of the rules which it contained were, and are still, preserved in the Bengal Code of Regulations.

In pursuance of the plan of the Committee, the Exchequer and the Treasury were removed from Moorshedabad to Calcutta, and a "Board of Revenue," as it was styled, consisting of the Governor and Council, with an establishment of native officers, was constituted at the Presidency, for the management, not only of the collections, but many of the most important duties of municipal government. The Supervisors appointed under Verelst's system became "Collectors," one of whom presided over each considerable district, assisted by a native officer, and

[1] Proceedings of the Governor and Council at Fort William respecting the administration of justice amongst the Natives of Bengal, p. 4, 4to. 1774.

the lands were leased to the highest bidder who could produce the requisite security for rent, for a period of five years. In each Collectorate were established Mofussil Dewanny Adawluts, or Provincial Civil Courts for the administration of civil justice[1], which were presided over by the Collectors on the part of the Company, in their capacity of King's Dewans, attended by the provincial Dewans and the other officers of the Collector's Court. These took cognizance of "all disputes concerning property, real or personal, all causes of inheritance, marriage, and cast, and all claims of debt, disputed accounts, contracts, and demands of rent[2];" excepting, however, questions relating to the succession to Zamíndárí and Talookdárí property, which were reserved for the decision of the Governor and Council.[3] A Criminal Court, styled the Foujdary Adawlut, was also established in each district, for the trial of "murder, robbery, and theft, and all other felonies, forgery, perjury, and all sorts of frauds and misdemeanours, assaults, frays, quarrels, adultery, and every other breach of the peace or violent invasion of property.[4] In these Criminal Courts the Kází or Muftí of each district was directed to sit to expound the law, and determine how far delinquents were guilty of any breach thereof; but it was also provided that the Collector should attend to the proceedings, and see that the decision was passed in a fair and impartial manner, according to the proofs exhibited.[5] Two Superior Courts were established at the chief seat of Government, to be called the Dewanny Sudder Adawlut and the Nizamut Sudder Adawlut[6]: the former to be presided over by the President and Members of Council, assisted by native officers[7], and to be a Court of Appeal in all cases where the disputed amount exceeded 500 rupees[8]; and the latter to be presided over by a chief officer, to be called the Dáróghah Adawlut, appointed on the part of the Názim, assisted by native Muhammadan law officers, with a similar controul to be exercised by the Chief and Council, with respect to the proceedings of the

[1] Plan, Rule I.
[2] Plan, Rule II.
[3] Plan, Rule II.
[4] Plan, Rule II.
[5] Plan, Rule IV.
[6] Plan, Rule V.
[7] Plan, Rule VI.
[8] Plan, Rule XXIV.

Court, as was vested in the Collectors of Districts.[1] The Nizamut Sudder Adawlut was to revise and confirm the sentences of the Foujdary Adawluts in capital cases and those involving fines exceeding 100 rupees[2], and to refer the former to the Názim for his sentence.[3]

In addition to these Courts, there were also subordinate ones of original jurisdiction placed at the chief points of the provincial divisions. The head farmers of each Pergunnah having a final judgment in all disputes not exceeding ten rupees[4], and the Collectors and some of the subordinate officers being invested with certain powers as Magistrates for the regulation of the Police.[5]

One of the leading features of this plan was, that in the Civil Courts Muhammadans and Hindús were entitled to the benefit of their own laws in all suits regarding inheritance, marriage, cast, and other religious usages and institutions.[6] I shall recur to this in the section treating of the Native Laws.

Such is the outline of the system first proposed by Warren Hastings, a system unavoidably imperfect, from the limited knowledge possessed at that period by the English of the habits and character of the Natives, and indeed of almost all that was requisite for rendering it effectual, but which must at the same time excite our admiration, when we call to mind the state of confusion into which the country had been plunged by a rapid succession of revolutions, and the consequent uprooting of society, that had scarcely left a vestige of the former institutions, and had most emphatically reduced the law to a dead letter; or when we remember the difficulties which must have surrounded any attempt to form a plan for the restoration of order, at a time when every public functionary had been long accustomed to fill his purse by the grossest extortion, and to convert the decision of disputed claims into an avowed means of self-aggrandisement.

The Committee of the House of Commons, in the celebrated

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[1] Plan, Rule VII. [2] Plan, Rule XXX. [3] Plan, Rule XXIX.
[4] Plan, Rule XI. [5] Plan, Rule XXXVI. [6] Plan, Rule XXIII.

Fifth Report, speaking of the Revenue and Judicial Regulations which were made under this system, observe, that they manifest "a diligence of research, and a desire to improve the condition of the inhabitants by abolishing many grievous imposts and prohibiting many injurious practices which had prevailed under the Native Government; and thus the first important step was made towards those principles of equitable government which it is presumed the Directors always had it in view to establish, and which, in subsequent institutions, have been more successfully accomplished."[1]

Soon after the adoption of this plan by Government, the Regulating Act of 1773 (the 13th Geo. III. c. 63) was passed: but this Statute, the first interference, strictly speaking, of the British Legislature in the administration of Indian affairs, did not materially affect the Government of India at large. The establishment of the Supreme Court at Calcutta, under this Act, created much dissatisfaction at the time, and was, as we have already seen, the cause subsequently of serious contentions; but the restriction and definition of its powers soon followed[2], and effectually did away with all cause of complaint. The most important part of the Regulating Act, however, is that in which it provided for the administration of the government of India by the appointment of a Governor-General and Council[3], who were empowered to make Rules and Regulations for the good government of Bengal, and were thus invested for the first time, by Parliament, with a delegated power of legislation.[4]

In the year 1774 the European Collectors were re-called, and native Aámils appointed instead; and at the same time the superintendence of the collection of the revenue was vested in six Provincial Councils appointed for the respective divisions of Calcutta, Burdwán, Dacca, Moorshedabad, Dinagepor, and Patna. The administration of civil justice was transferred from

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[1] Fifth Report from the Select Committee of the House of Commons, 1812, p. 6.

[2] 21st Geo. III. c. 70.

[3] 13th Geo. III. c. 63. ss. 7, 8.

[4] 13th Geo. III. c. 63. ss. 36, 37. And see *infra*, the Section on the Laws peculiar to the Courts in India.

the Collectors to the Aámils, from whose decisions an appeal lay in every case to the Provincial Councils, and thence, under certain restrictions, to the Governor and Council as the Sudder Adawlut.

After Warren Hastings had presided in the chief Criminal Court established at Calcutta for about eleven months, he felt himself obliged, from the multiplicity of business, to resign the situation; and accordingly, in October 1775, the Nizamut Adawlut was removed from Calcutta and established at Moorshedabad, under the superintendence of Muhammad Rizá Khán, who was invested with the office of Náïb Názim, at the recommendation of the Governor-General, and Foujdars were appointed in the several districts for apprehending and bringing to trial all offenders against the public peace.[1]

These arrangements for the administration of justice remained in force, with scarcely any change, until the year 1780, when the Calcutta Government passed Regulations which contained the following provisions: The jurisdiction of the Provincial Councils was confined exclusively to revenue matters[2]; and in each of the six great divisions above mentioned was established a Court of Dewanny Adawlut, presided over by a covenanted servant of the East-India Company, styled Superintendent of Dewanny Adawlut[3], whose jurisdiction extended over all claims of inheritance to Zamíndáris, Talookdáris, and other real property or mercantile disputes[4], and all matters of personal property, with the exception of what was reserved to the Provincial Courts, who were still to decide on all cases having relation to revenue, as well as on all demands of individuals for arrears of rent, and on all complaints from tenants and cultivators of undue exaction of revenue.[5] The decision of the Superintendent was to be final in all cases where the sum

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[1] Fifth Report from the Select Committee of the House of Commons, 1812, p. 6. Bengal Judicial Regulation, XXVI. 1790, Preamble. In the Fifth Report the establishment of Foujdars and Tannahdars is stated to have taken place in 1774.

[2] Bengal Judicial Regulation, I. 1780, s. 3.

[3] Jud. Reg. I. 1780, s. 1.

[4] Jud. Reg. I. 1780, s. 5.

[5] Jud. Reg. I. 1780, s. 3.

in dispute did not exceed 1000 rupees, but above that sum an appeal lay to the Sudder Dewanny Adawlut.[1]

At this time the many avocations of the Governor-General and Council compelled them to give up sitting in the Sudder Dewanny Adawlut, and a separate Judge was accordingly appointed to preside in that Court. The person selected for this high office was Sir Elijah Impey, and his acceptance of it was one of the principal charges from which that much-calumniated Judge so triumphantly cleared himself. He has been accused, by an eminent writer, of having accepted the office as a bribe; but whilst his legal attainments and position sufficiently account for his selection without having recourse to that odious supposition, the self-denial, so rare in India in those days, with which he "declined appropriating to himself any part of the salary annexed to the office of Judge of the Sudder Dewanny Adawlut until the pleasure of the Lord Chancellor should be known[2]," of itself sufficiently refutes an accusation couched in terms as virulent and unfair, as the statements it contains are themselves partial and unfounded upon fact.

Sir Elijah, in fulfilment of the duties which devolved upon him by virtue of his new office, and without any remuneration, prepared a series of Regulations for the guidance of the Civil Courts, which he submitted to Government in November 1780. They were approved of by that body, and were afterwards incorporated, with additions and amendments, in a revised Code, passed in 1781, which was translated into the Persian and Bengálí languages.[3] Under these Regulations, all civil causes were made cognizable by the Dewanny Adawluts, which had been increased from six to eighteen, for the sake of rendering the jurisdictions of the individual Judges less inconveniently extensive.[4] The functions of the Judges of these Courts were entirely severed

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[1] Jud. Reg. I. 1780, ss. 30, 31.

[2] Extracted from Bengal Consultations in the East-India House, quoted in the Memoirs of Sir Elijah Impey, by his Son, p. 221, 8vo. Lond. 1846.

[3] The Persian translation by Mr. W. Chambers was printed in 1782. The Bengálí version by Mr. Duncan was printed in 1785.

[4] Jud. Reg. III. 1781, s. 1.

from the revenue department, four districts being, however, excepted, where, for local reasons, the functions of Civil Judge and Collector were exercised by the same persons, but expressly in distinct capacities, and, as Civil Judge, wholly independent of the Board of Revenue, and subject only to the authority of the Governor-General in Council and of the Judge of the Sudder Dewanny Adawlut.[1] An appeal lay from the decisions of the Provincial Dewanny Adawluts, in cases where the amount in dispute exceeded 1000 rupees, to the Sudder Dewanny Adawlut.[2]

In the year 1781 the Foujdars, instituted in 1775, were abolished, and the Police jurisdiction was transferred to the Judges of the Dewanny Adawluts, or, in some cases, to the Zamíndár, by special permission of the Governor-General in Council. The Judges, however, were not empowered to punish, but merely to apprehend offenders, whom they were at once to forward to the Dáróghah of the nearest Foujdary Court; and the Judge of the Dewanny Adawlut, the Dáróghah of the Nizamut Adawlut, and the Zamíndár were to exercise a concurrent jurisdiction for the apprehension of robbers and disturbers of the public peace.[3] A separate department was established at the Presidency, under the immediate controul of the Governor-General, to receive reports and returns of the proceedings of the Foujdary Courts, and lists of prisoners apprehended and convicted by the authorities in the provinces.[4] To arrange these records, and to maintain a check on all persons entrusted with the administration of criminal justice, an officer was appointed, to act under the direction of the Governor-General, with the title of Remembrancer of the Criminal Courts.[5] The ultimate decision still rested with the Náïb Názim at Moorshedabad. In the same year the Provincial Councils were dissolved, and a Committee of Revenue established, to be entrusted with the charge and administration of all revenue matters, to be vested with the powers of the Provincial Councils, and to be under the controul of the Governor-General and Council.[6]

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[1] Jud. Reg. VI. 1781, ss. 2—12.
[2] Jud. Reg. VI. 1781, ss. 53, 74.
[3] Jud. Reg. XX. 1781, ss. 6—8.
[4] Jud. Reg. XX. 1781, ss. 11, 12.
[5] Jud. Reg. XX. 1781, s. 14.
[6] Revenue Reg. I. 1781.

In 1782 the Court of Directors sent out orders to the Governor-General in Council to resume the superintendence of the Sudder Dewanny Adawlut, which Court had been constituted in the preceding year a Court of Record, by the 21st Geo. III. c. 70. s. 21; and it may be remarked, that thus, although it is generally looked upon as the principal Court of the Honourable East-India Company, it is in reality a Queen's Court. This Statute declared the judgments of the Governor-General and Council in appeal from the Provincial Courts in civil causes to be final, except in civil suits where the amount in dispute was of £5000 and upwards, when an appeal lay to the King in Council.[1]

The progress of the judicial system cannot be traced for the next four years, but no material alteration seems to have taken place.[2]

In the mean time Parliament again interfered, and an Act was passed in 1784, *viz.* the 24th Geo. III. c. 25, to regulate the affairs of the East-India Company and of the British possessions in India. Section 39 of this Statute, which may be said to form the basis of the present constitution of British India, commanded the Company to institute inquiries into the complaints that had prevailed that divers Rajahs, Zamíndárs, Polygars, Talookdárs, and other native landholders within the British territories in India, had been unjustly deprived of, or compelled to abandon and relinquish, their respective lands, jurisdictions, rights, and privileges, or that the tributes, rents, and services required of them had become oppressive; and those grievances, if founded upon truth, were directed to be effectually redressed, in such manner as should be consistent with justice and the laws and customs of the country, and permanent rules to be settled and established upon principles of moderation and justice, according to the laws and constitution of India, by which their tributes, rents, and services should be rendered and paid.

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[1] See *infra* the Section on Appeals to England.

[2] Leith's History of the Rise and Progress of the Adawlut System, p. 24. 8vo. Lond. 1822, 2d edit.

This Act also established the Board of Commissioners for the affairs of India; and the attention of that body, and of the Court of Directors, was immediately turned to the important objects comprised in the above requisition.

The Marquis Cornwallis was selected to superintend the measures determined upon, and in the year 1786 he proceeded to India as Governor-General, carrying with him detailed instructions from the Court of Directors, which were dictated by a wise and considerate spirit, stating "that they had been actuated by the necessity of accommodating their views and interests to the subsisting manners and usages of the people, rather than by any abstract theories drawn from other countries or applicable to a different state of things."

In compliance with these instructions, Lord Cornwallis directed the re-union of the functions of civil and criminal justice with those of the collection and management of the revenue; and the Dewanny Adawluts were accordingly, in the year 1787, placed under the superintendence of the Collectors.[1] District Courts were established in Moorshedabad, Dacca, and Patna, presided over by Judges and Magistrates who were not Collectors, that office being unnecessary, as their jurisdiction was circumscribed by the limits of those cities.[2] The proper Collectors' or Revenue Courts were kept distinct from the Dewanny Adawluts, although presided over by the same persons.[3] From the latter, appeals were allowed, within certain limits, to the Governor-General and Council, in their capacity of Judges of the Sudder Dewanny Adawlut[4]; and the decisions of the Revenue Courts were appealable, first to the Board of Revenue, and thence to the Governor-General in Council.[5] The Collectors also were appointed to act as Magistrates[6] in apprehending

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[1] Jud. Reg. VIII. 1787, s. 2.; Rev. Reg. XX. 1787.
[2] Jud. Reg. VIII. 1787, ss. 2, 11.; Rev. Reg. XX. 1787.
[3] Jud. Reg. VIII. 1787, s. 19.; Rev. Reg. XXIII. 1787, s. 1.
[4] Jud. Reg. VIII. 1787, ss. 53—72.
[5] Rev. Reg. XXIII. 1787, s. 42.
[6] Jud. Reg. XXII. 1787. s. 1.; Rev. Reg. XX. 1787.

offenders against the public peace; but with the exception of the chastisement of petty offences, they had no power of trial or punishment, and were directed to deliver up their prisoners for that purpose to the Muhammadan criminal officers[1], who were not to be interfered with[2] beyond the influence possessed by the British Government in recommending the mitigation of punishments of unnecessary cruelty.

The administration of criminal justice remained in the hands of the Náïb Názim until the end of the year 1790, when the Governor-General, convinced of the inefficacy of the different plans which had been adopted and pursued from the year 1772, declared that, with a view to ensure a prompt and impartial administration of the criminal law, and in order that all ranks of people might enjoy security of person and property, he had resolved in Council to resume the superintendence of the administration of criminal justice throughout the provinces.[3] Accordingly the Nizamut Adawlut was again removed from Moorshedabad to Calcutta, and was appointed to consist of the Governor-General and members of the Supreme Council, assisted by the Kází al Kuzát and two Muftís.[4] This Court was at once a Court of Criminal Appeal and a Board of Police, as it took cognizance, not only of all judicial matters, but of the general state of the Police throughout the country.[5] All persons charged with crimes and offences were to be apprehended by the Magistrates, and an inquiry instituted; when, if the charge proved groundless, they were to be acquitted and dismissed; but if the crime were proved, they were to be admitted to bail, except in cases of murder, theft, burglary, or robbery; and in all proved cases they were to be committed for trial by the Court of Circuit. Trivial cases of assault, abuse, or affray were punishable by the Magistrates by limited flagellation or imprisonment.[6] Four Courts of Circuit, superintended respectively by two Judges, who were to be covenanted servants of the Company, assisted by Kázís and Muftís as Assessors, were

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[1] Jud. Reg. XXII. 1787, ss. 3—5. [2] Jud. Reg. XXII. 1787, s. 14.
[3] Jud. Reg. XXVI. 1790, Preamble. [4] Jud. Reg. XXVI. 1790, ss. 41, 42.
Jud. Reg. XXVI. 1790, s. 52. [6] Jud Reg. XXVI. 1790, ss. 3—6.

at the same time established, for the trial of such crimes as were not punishable by the Magistrates.[1] These Judges were required to hold a general gaol delivery every six months[2], and, in capital cases, to report their proceedings to the Nizámut Adawlut at Calcutta for confirmation.[3] In the Regulations for these Courts of Circuit we meet, for the first time, with the provision, that in trials for murder the doctrine of Abú Yúsuf and Muhammad, requiring the evidence of criminal intention alone, was to be applied in regulating the Fatwa of the law officers, in opposition to that of Abú Hanífah[4], which required the actual employment of an instrument of blood: the relations of a murdered person were also debarred from pardoning the offender.[5]

In 1791 the Judges of the Courts of Circuit were required to transmit to the Nizamut Adawlut all trials wherein they disapproved of the proceedings held on trial, or of the Fatwa of the law officers.[6] In the same year imprisonment and hard labour were substituted for mutilation[7], and the Court of Nizamut Adawlut was empowered to pass sentence of death, instead of granting Díyat to the heir.[8]

In 1792 the rule that the refusal to prosecute by the relatives of a murdered person was to bar the trial of the offender was abrogated.[9] In the same year the Government took the management of the Police entirely out of the hands of the Zamíndárs and farmers of land, who were no longer to be held responsible for robberies committed in their estates or farms, and placed it under the controul of the Magistrates, who were required to divide their respective Zillahs into Police jurisdictions of twenty miles square, to be superintended by a Dáróghah and a suite of Police officers, to be paid by the Government.[10]

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[1] Jud. Reg. XXVI. 1790, ss. 20. 24. [2] Jud. Reg. XXVI. 1790. s. 31.
[3] Jud. Reg. XXVI. 1790. s. 32.
[4] Jud. Reg. XXVI. 1790, s. 33. This distinction of doctrine will be explained in a subsequent section on the Muhammadan Law.
[5] Jud. Reg. XXVI. 1790, s. 34. [6] Jud. Reg. XXXIII. 1791, s. 3.
[7] Jud. Reg. XXXIV. 1791. [8] Jud. Reg. XXXVII. 1791, s. 3.
[9] Jud. Reg. XL. 1792, s. 1. [10] Jud. Reg XLIX. 1792.

(2) System of 1793.

The administration of civil justice appears to have remained materially the same from 1787 until 1793, when Lord Cornwallis introduced his celebrated system of judicature, and formed the Regulations into a regular Code, which is the basis of the Regulation Law prevalent throughout India at the present time.

The earliest alteration made by this system was the vesting the collection of revenue and the administration of justice in separate officers; and for this were assigned, amongst others, the following reasons: "It is obvious, that if the Regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and that individuals who have been aggrieved by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them from administering the laws between the proprietors of land and their tenants."[1] The Mál Adawluts, or Revenue Courts, were accordingly abolished, the Revenue Board was divested of its powers as a Court of Appeal, and all causes hitherto tried by the revenue officers were transferred to the Dewanny Adawluts[2], which were now established in each provincial division, and presided over respectively by a covenanted servant, in whose person were united the powers of Judge and Magistrate, and who also had the management of the Police within the limits of his division.

The Courts of Civil Judicature established under Lord Cornwallis' system formed a regular gradation of Courts of Appeal. The lowest in the series were the Courts of the Native Commissioners, who were to hear and decide in the first instance, where the cause of action did not exceed fifty rupees.[3] These Native Commissioners were of three denominations, termed Ameens or Referees, Sálisán or Arbitrators, and Munsifs or Native Justices[4]; and from their decisions an

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[1] Reg. II. 1793, Preamble.
[2] Reg. II. 1793, s. 2.
[3] Reg. XL. 1793, s. 2
[4] Reg. XL. 1793, s. 5.

appeal lay to the Zillah or City Judge.[1] The second description of Courts were those of the Registers, who were covenanted servants attached to the Zillah and City Courts, and who, in order to prevent the time of such Courts being occupied by the trial of petty suits, were, when authorised by the Zillah and City Judges, empowered to try and decide causes for an amount not exceeding 200 rupees. The decrees passed by a Register were not valid unless revised and countersigned by the Judge.[2] Next in order were the Zillah and City Courts, twenty-six in number, which were each presided over by a single Judge, being a covenanted servant, assisted by Hindú and Muhammadan law officers and a Register, having cognizance of all civil suits in the first instance[3]: their decisions were not final, and were appealable in all cases to the Provincial Courts.[4] The Provincial Courts of Appeal, which were four in number, were the fourth in the ascending scale, and were each presided over by three European Judges. These were established, one in the vicinity of Calcutta, one at the city of Patna, one at Dacca, and the fourth at Moorshedabad[5]: they were provided respectively with a Register, a Kází, a Muftí, and a Pandit, and with a competent number of native ministerial officers. The decision of the Provincial Courts was final in suits where the disputed amount did not exceed the sum of 1000 rupees: above that sum an appeal lay to the Sudder Dewanny Adawlut.[6] The Sudder Dewanny Adawlut was established at the Presidency, and consisted of the Governor-General and Members of the Supreme Council.[7] This Court took cognizance of appeals from the Provincial Courts[8], and its judgment was final in all civil suits whatever.[9] The Sudder Dewanny Adawlut

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Reg. XL. 1793, s. 20.
[2] Reg. XIII. 1793, s. 6.
[3] Reg. III. 1793, ss. 2, 3. 8.
[4] Reg. III. 1793, s. 20.
[5] Reg. V. 1793, s. 2.
[6] Reg. V. 1793, ss. 23. 25, 26. 30.
[7] Reg. VI. 1793, s. 2.
[8] Reg. VI. 1793, s. 10.
[9] Reg. VI. 1793. s. 29. This Regulation seems to have been made irrespective of the appeal to the King in Council under the 21st Geo III. c. 70, s. 21; the defect was, however, subsequently remedied by Reg. XVI. of 1797. See *infra* the Section on Appeals to England.

was also authorised to admit appeals from the decisions of the Provincial Councils, or of the Committee or Board of Revenue.[1]

Criminal justice was administered, under the new system introduced in 1793, in the following manner. The Zillah and City Judges were constituted Magistrates, their jurisdiction being co-extensive with their jurisdiction as Judges.[2] The Magistrates and their assistants were empowered to apprehend murderers, robbers, thieves, housebreakers, and persons charged with crimes and misdemeanours[3]; and in certain cases, as abusive language, calumny, assaults, and affrays, were authorised to pass final sentence, subject, however, to the controul of the Courts of Circuit and Nizamut Adawlut, and to punish such offenders, within certain limits, by corporal chastisement, fine not to exceed 200 rupees, or imprisonment for a term not exceeding fifteen days.[4] British subjects charged with offences, and residing in the provinces, were to be apprehended and sent for trial to the Supreme Court at Calcutta.[5] Four Courts of Circuit were established, to consist of the Judges of the Provincial Courts of Appeal, and the Kází and Muftí attached to those Courts.[6] These were Courts of half-yearly Gaol Delivery for certain Zillahs, and monthly for the cities of Patna, Dacca, and Moorshedabad, and certain other Zillahs.[7] These Courts were empowered to pass sentence of death or imprisonment for life, but were to transmit the proceedings to the Nizamut Adawlut[8] to await the final sentence of that Court, which being sent back to the Judges, they were to issue an immediate warrant for execution.[9] The Nizamut Adawlut, or chief Criminal Court, was held at Calcutta, and consisted of the Governor-General and Members of the Council, assisted by the Kází al Kuzát and two Muftís.[10] This Court had cognizance of all matters relating to the administration of Criminal justice

[1] Reg. VI. 1793, s. 9.
[2] Reg. IX. 1793, ss. 2, 3.
[3] Reg. IX. 1793, s. 4.
[4] Reg. IX. 1793, ss. 8, 9.
[5] Reg. IX. 1793, s. 19.
[6] Reg. IX. 1793, ss. 31. 33. 36.
[7] Reg. IX. 1793, ss. 40. 44, 45.
[8] Reg. IX. 1793, s. 58.
[9] Reg. IX. 1793, s. 78.
[10] Reg. IX. 1793, ss. 66, 67.

and the Police, and was authorised to exercise the same powers as were vested in it when it was superintended by the Náïb Názim.[1] The sentences of the Nizamut Adawlut were in all cases to be final; but the Governor-General in Council had a power of pardoning or commuting the punishment awarded.[2] All these Courts administered the Muhammadan criminal law as modified by the Regulations.

The Police Regulations introduced in the year 1793 were a re-enaction, with some amendments, of those passed in 1792, already alluded to. The Police was declared to be under the exclusive charge of officers appointed by Government; and the landholders and farmers were prohibited from keeping up their establishments of Police, and exempted from responsibility for robberies committed within their estates, unless their connivance were proved[3]; the division into Police jurisdictions was retained, and they were each to be guarded as before by a Dárógháh, who was directed to maintain a suite of Police-officers at the expense of Government, and to apprehend and send to the Magistrates all persons charged with crimes and misdemeanours, and vagrants.[4] The Magistrates and Police-officers of the cities were invested with concurrent authority in their respective jurisdictions, and with those of the Zillahs[5]; and the cities were to be divided into wards, to be guarded by Dárógháhs, who were to be under the immediate inspection and subject to the authority of the Kútwáls of each city.[6]

The reformed system of 1793, of which I have thus attempted a concise description, constitutes the main fabric of the actual administration of justice at the present day, not only in Bengal, Behar, and Orissa, but throughout British India. Various modifications and improvements were gradually introduced; and nowhere has the humane policy of the Government been more distinctly shewn, or more thoroughly successful, than in the increased employment of the Natives in judicial offices, and

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[1] Reg. IX. 1793. ss. 72, 73.
[2] Reg. IX. 1793, s. 79.
[3] Reg. XXII. 1793, ss. 1—3.
[4] Reg. XXII. 1793, ss. 4—12.
[5] Reg. XXII. 1793, s. 25.
[6] Reg. XXII. 1793, s. 26.

the confidence placed in them by extending the jurisdiction of the Courts over which they are appointed to preside.

I shall now give a rapid sketch of the more material alterations that have taken place in the judicial system of Bengal since the year 1793; and for greater clearness I shall treat of the several departments of Civil and Criminal Judicature and the Police under distinct heads.

(3) Alterations since 1793.

(a) *Civil Judicature.*

The first alteration of any importance was the giving a final power of decision to the Registers in suits not exceeding 25 rupees in value, above which amount an appeal lay to the Provincial Courts.[1] In the following year the Zillah and City Courts were also empowered to decide finally on all appeals from their Registers or the Native Commissioners.[2]

The jurisdiction of the Provincial Courts was extended in the year 1797, when they were authorised to take cognizance of, and decide finally, suits to the value of 5000 rupees, above which sum their decisions were appealable to the Sudder Dewanny Adawlut.[3] In the same year[4] rules were also enacted for the conduct of appeals to the King in Council from the Sudder Dewanny Adawlut, which will be more particularly mentioned in a subsequent section treating of appeals to England.

A material alteration took place in the constitution of the Sudder Dewanny Adawlut during the administration of the Marquis of Wellesley in the year 1801, when it was made to consist of three Judges, to be selected from the covenanted servants of the Company.[5] The number of Judges was increased in the year 1811, and the Court declared thenceforth to consist of a Chief Judge and of as many Puisne Judges as the

[1] Reg. VIII. 1794, ss. 6, 7.
[2] Reg. XXXVI. 1795, s. 4.
[3] Reg. XII. 1797, s. 2.
[4] Reg XVI. 1797.
[5] Reg. II. 1801, ss. 2, 3.

Governor-General in Council might deem necessary.[1] In the same year a summary appeal, whatever might be the value at issue, was directed to be cognizable by the Sudder Dewanny Adawlut, the Provincial Courts, or the Courts of the Zillah and City Judges, where the Courts immediately below such Courts respectively had refused to admit a regular appeal on the ground of delay, informality, or other default in preferring it.[2]

In 1803 Head Native Commissioners were appointed in the cities and zillahs, for the trial of suits not exceeding 100 rupees[3], and the jurisdiction of the Registers was increased to 500 rupees, but at the same time their power of final decision was abolished.[4] The decisions of the Zillah and City Judges were declared to be final in all appeals from the Native Commissioners[5]; but an appeal was directed to lie to the Provincial Courts from all decisions of the Zillah and City Judges in causes tried by them in the first instance, viz. without a previous trial by their Registers or the Native Commissioners.[6] The Provincial Courts were also empowered to admit a second or special appeal from all decrees of the Zillah and City Judges in appealed cases from the decisions of the Native Commissioners or Registers, in cases in which a regular appeal would not lie, if such decrees should appear to be erroneous or unjust, or the nature of the cause of sufficient importance to require further investigation.[7] Assistant Zillah and City Judges were appointed in the same year.[8]

In the year 1805 the Sudder Dewanny Adawlut was invested with a like power of receiving special appeals from the decrees of the Provincial Courts in similar cases not open to a regular appeal.[9] In the same year the Provincial Courts were authorised to admit a summary appeal in cases where the Zillah and City Courts refused to admit or hear original suits on the ground of default, delay, or other informality.[10]

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[1] Reg. XII. 1811, s. 2.
[2] Reg. II. 1801, ss. 8, 9.
[3] Reg. XVI. 1803, s. 26.
[4] Reg. XLIX. 1803, s. 6.
[5] Reg. XLIX. 1803, s. 22.
[6] Reg. XLIX. 1803, s. 23.
[7] Reg. XLIX. 1803, s. 24.
[8] Reg. XLIX. 1803, s. 2.
[9] Reg. II. 1805, s. 10.
[10] Reg. II. 1805, s. 11.

In 1808 the Zillah and City Courts were restricted in their original jurisdiction to suits of the value of 5000 rupees, over which sum they were to be originally cognizable in the Provincial Courts.[1]

In the year 1813, by the Statute 53d Geo. III. c. 155. s. 107, British subjects residing, trading, or holding immoveable property in the provinces, were made amenable to the Company's Courts in civil suits brought against them by Natives, with, however, a right of appeal to the Supreme Court at Fort William in cases where an appeal otherwise lay to the Sudder Dewanny Adawlut.

In 1814 the office of Assistant Judge was abolished[2]; and in the same year Moonsiffs and Sudder Ameens were appointed, the former to try causes not exceeding 64 rupees[3], and the jurisdiction of the latter extending to 150 rupees.[4] An appeal lay from their decisions to the Zillah or City Judge. The Registers were also in this year empowered to decide suits referred to them above the value of 500 rupees, but such suits were appealable to the Provincial Courts.[5] In the same year more definite Rules were enacted with respect to the admission of special appeals, which were directed to lie to the Superior Courts only when the judgment should appear to be inconsistent with precedent, or some Regulation, or with the Hindú or Muhammadan law, or other law or usage which might be applicable, or unless it should involve some point of importance not before decided by the Superior Courts.[6] Summary appeals were also directed to lie from the Provincial Courts to the Sudder Dewanny Adawlut, from the Zillah and City Courts to the Provincial Courts, and from the Registers or Sudder Ameens to the Zillah and City Courts, in cases where the lower Courts had respectively refused to admit or investigate any suit, original or in appeal, regularly cognizable by them on the ground of delay, informality, or other default.[7]

[1] Reg. XIII. 1808, ss. 2, 3.
[2] Reg. XXIV. 1814, s. 3.
[3] Reg. XXIII. 1814, s. 13.
[4] Reg. XXIII. 1814, s. 68.
[5] Reg. XXIV. 1814, s. 9.
[6] Reg. XXVI. 1814, s. 2.
[7] Reg. XXVI. 1814. s. 3.

All decisions of the Provincial Courts, which had been increased from four to six in number[1], and which, as has already been mentioned, had been empowered to decide finally in cases of the value of 5000 rupees, whether original or in appeal from Zillah or City Judges, were, in 1814, declared to be appealable to the Sudder Dewanny Adawlut.[2] Early in this year the number of Judges in these Courts had been augmented from three to four.[3] In the same year an original jurisdiction was given to the Sudder Dewanny Adawlut in suits for the value of 50,000 rupees, when such suits could not be conveniently heard in the Provincial Courts.[4]

In the year 1817 the original jurisdiction of the Zillah and City Courts was extended to 10,000 rupees[5], and an appeal was directed to lie to the Provincial Courts from their decisions in all suits, whether original or appealed from the Courts of the Registers. In the same year it was directed that special appeals should be allowed where decrees passed by one or more Courts were inconsistent with each other.[6]

Several extensions and definitions of the grounds for the admission of special appeals, which it is unnecessary to specify, had been at various times enacted, when, in 1819, it was further declared to be competent to the Provincial Courts and to the Sudder Dewanny Adawlut to admit a second or special appeal whenever, on a perusal of the decree of a lower Court from whose decision the special appeal was desired, there might appear strong probable ground, from whatever cause, to presume a failure of justice.[7] This provision was, however, subsequently rescinded, and the Courts were directed to conform to the former rules with regard to the admission of second or special appeals.[8]

In the year 1821 the number of Moonsiffs was increased, and their jurisdiction extended to suits of the value of 150 rupees.[9]

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[1] Reg. IX. 1795, s. 2., and Reg. IV. 1803, s. 2.
[2] Reg. XXV. 1814, s. 5.
[3] Reg. V. of 1814, s. 2.
[4] Reg. XXV. 1814, s. 5.
[5] Reg. XIX. 1817, s. 2.
[6] Reg. XIX. 1817, s. 7.
[7] Reg. IX. 1819, s. 2.
[8] Reg. II. 1825, ss. 4, 5.
[9] Reg. II. 1821, s. 3.

Sudder Ameens were at the same time empowered to take cognizance of claims up to the amount of 500 rupees[1].

Many important rules were enacted in the year 1831, most of which are now in force: the jurisdiction of the Moonsiffs was extended to 300 rupees[2], and Sudder Ameens were empowered to try suits referred to them by the Zillah and City Judges, to the amount of 1000 rupees[3]; an appeal lay to the Zillah or City Judge, whose decision was final.[4] Principal Sudder Ameens were also appointed, with power to take cognizance of all suits, referred as above, of the value of 5000 rupees[5]; a regular appeal lay from their original decisions to the Zillah and City Judges, and a special appeal to the Sudder Dewanny Adawlut.[6] Special and summary appeals from decrees and orders in original suits and appeals, tried by Principal Sudder Ameens, were directed to be governed by the Rules previously in force respecting the admission of such appeals.[7] At the same time the Registers' Courts were abolished, and all suits pending therein were directed to be called in and referred, as the amount might be, to the Sudder Ameens or Principal Sudder Ameens.[8] The Provincial Courts of Appeal were also gradually superseded, and the Zillah and City Judges were empowered instead to take cognizance of all suits exceeding in value 5000 rupees[9]. An appeal lay from their original decisions to the Sudder Dewanny Adawlut.[10]

In 1833 the Provincial Courts were finally abolished; all original suits then pending in such Courts were directed to be transferred to the Zillah and City Courts; and all appeals, regular, special, or summary, so pending, were to be transferred to the Sudder Dewanny Adawlut.[11] Additional Zillah and City Judges were also appointed in the same year.[12]

In 1836 it was enacted that the 53d Geo. III. c. 155, s.

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1 Reg. II. 1821, s. 5.
2 Reg. V. 1831, s. 5.
3 Reg. V. 1831, s. 15.
4 Reg. V. 1831, s. 28.
5 Reg. V. 1831, ss. 17, 18.
6 Reg. V. 1831, s. 28.
7 Reg. V. 1831, s. 19.
8 Reg. V. 1831. s. 29.
9 Reg. V. 1831, s. 27.
10 Reg. V. 1831, s. 28.
11 Reg. I. 1833.
12 Reg. VIII. 1833, s. 2.

107, which gave to British subjects resident in the provinces a right of appeal from the Company's to the Supreme Courts, should cease to have effect in India; and it was also enacted that no person by reason of birth or descent should be exempt from the jurisdiction of the Company's Courts[1], or be incapable of being a Principal Sudder Ameen, Sudder Ameen, or Moonsiff.[2]

In the year 1837 the powers of the last-named officers were further enlarged, and they were empowered to set aside summary judgments passed by Collectors.[3] The Principal Sudder Ameens were authorised to take cognizance of suits of any amount referred to them by the Zillah or City Judges[4]; and also of all original suits so referred, preferred by Proprietors, Farmers, or Talookdárs, for the revenue of land held free from assessment, or claiming to hold lands exempt from revenue.[5] In suits exceeding in amount 5000 rupees an appeal lay from their decisions direct to the Sudder Dewanny Adawlut[6]; but in suits referred to Principal Sudder Ameens within the competency of a Moonsiff to decide, their decisions were appealable to the Zillah or City Judges, whose decision was to be final.[7] The Zillah and City Judges were also, in the same year, authorised to transfer any civil proceeding to a Principal Sudder Ameen; and in such cases an appeal from his order lay in the first instance to the Zillah or City Judge, and specially to the Sudder Dewanny Adawlut.[8]

In the year 1843 it was enacted that special appeals should lie to the Sudder Dewanny Adawlut from all decisions passed in regular appeals in all subordinate Civil Courts, when it should appear that such decisions were inconsistent with law or usage, or the practice of the Courts, or involved doubtful questions of law, usage, or practice.[9]

In the year 1844 it was enacted that all suits within the

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[1] Act XI. 1836.
[2] Act VIII. 1836, s. 1.
[3] Act XXV. 1837, s. 2.
[4] Act XXV. 1837, s. 1.
[5] Act XXV. 1837, s. 3.
[6] Act XXV. 1837, s. 4.
[7] Act XXV. 1837, s. 6.
[8] Act XXV. 1837, s. 8.
[9] Act III. 1843, s. 1.

competency of a Principal Sudder Ameen or Sudder Ameen to decide should ordinarily be instituted in their Courts; but that the Zillah or City Judges might withdraw them, and try them themselves, or refer them to any other competent Court subordinate to them. The Zillah and City Judges were also empowered to admit summary appeals from the orders of Principal Sudder Ameens and Sudder Ameens rejecting suits cognizable by them.[1]

(*b*) *Criminal Judicature.*

The alterations in the system of criminal judicature introduced by Lord Cornwallis in 1793 have kept pace with the improvements in the civil department. A fourth Court of Circuit was established for Benares in 1795[2], and subsequently a fifth for the ceded provinces.[3]

The Assistants to the Magistrates were granted a limited occasional exercise of judicial powers in the year 1797.[4]

In the year 1801 the constitution of the Nizamut Adawlut was altered; the Governor-General and Council no longer presided; and it was declared to consist of three Judges, assisted by the chief Kází and two Muftís.[5] The number of Judges was afterwards increased, as in the Sudder Dewanny Adawlut.[6]

In 1807 Magistrates were given an extended jurisdiction, and were empowered to inflict imprisonment, not exceeding one year, in addition to fine or stripes[7]; but this power was not to be exercised by Assistant Magistrates.[8]

In 1808 it was declared that all trials of persons for robbery with open violence, and liable to transportation for life, should, on the conviction of the offender, be referred to the Nizamut Adawlut.[9]

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[1] Act IX. 1844, ss. 1, 2. 4.
[2] Reg. V. 1795.
[3] Reg. VII. 1803.
[4] Reg. XIII. 1797, s. 3.
[5] Reg. II. 1801, s. 10.
[6] Reg. XII. 1811, s. 2.
[7] Reg. IX. 1807, s. 19.
[8] Reg. IX. 1807, s. 20.
[9] Reg. VIII. 1808, s. 4.

In the year 1810 an important alteration was made, enabling the Government to appoint other persons, not being Zillah or City Judges, to exercise with them the office of Joint Magistrates. Assistant Magistrates were also appointed, with limited powers, for Police and other purposes. The superintendence of the Police, however, remained with the Zillah and City Magistrates, when not placed under the immediate authority of the Joint or Assistant Magistrates.[1]

In the year 1813 the Statute 53d Geo. III. c. 155. s. 105, made British subjects resident in the provinces punishable by the District and Zillah Magistrates for assaults and trespass against the Natives of India; but the convictions of such Magistrates were removable by Certiorari to the King's Courts.

In 1814 the Judges of the Courts of Circuit were increased to the number of four[2]; and afterwards, in 1826, the Governor-General in Council was empowered to appoint any number that might be deemed expedient.[3]

In 1817 all trials where persons were convicted in the Courts of Circuit of robbery or burglary not within the provisions for robbery by open violence, if accompanied by murder, attempt to commit murder, or wounding, were made referrible to the Nizamut Adawlut.[4]

In the year 1818 the jurisdiction of the Magistrates and Joint Magistrates was extended, and they were empowered to try offenders charged with burglary, or attempt to commit that crime, and theft: if not attended with murder or violence, they were authorised to sentence to flogging, not exceeding thirty stripes, and imprisonment with hard labour for a term not exceeding two years[5]; but otherwise they were to commit the prisoner for trial to the Court of Circuit: they also had authority to punish, in certain cases, persons convicted by them of buying or receiving stolen property, or of having escaped from gaol.[6] In 1819 they were further empowered to try offenders for woman-stealing, and for desertion of their wives and

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[1] Reg. XVI. 1810.
[2] Reg. V. 1814, s. 2.
[3] Reg. I. 1826.
[4] Reg. XVII. 1817, s. 8.
[5] Reg. XII. 1818, ss. 2, 3.
[6] Reg. XII. 1818, ss. 4, 5.

families[1], and all sentences of Magistrates and Joint Magistrates were declared to be under the controul of the Courts of Circuit.[2]

In 1821 the jurisdiction of Assistant Magistrates was somewhat extended, and they, as well as the law officers of the Zillah and City Courts, were authorised to try and determine petty thefts and other trivial offences when referred to them by a Magistrate, and to inflict fines, flogging, and imprisonment, within certain limits; the Assistant Magistrates being empowered to imprison offenders for one year, and the law officers and Sudder Ameens for the space of one month.[3]

Corporal punishment by flogging was limited in the year 1825: females were entirely exempted[4], and the ratan was substituted for the korah[5], a heavy whip, which had been represented in some instances to have caused injurious effects. The Judges of Circuit were, in the same year, empowered to pass final sentences, and to carry them into execution, without reference to the Nizamut Adawlut on the ground of their want of authority to inflict sufficient punishment, in all cases of culpable homicide not amounting to wilful murder.[6] This power of passing final sentences was extended in 1825 to persons convicted of robbery by open violence not attended with murder or attempt to murder; the punishment, however, being restricted to thirty-nine ratans, and imprisonment with hard labour for fourteen years.[7]

In 1829 Commissioners of Circuit were appointed, with the same powers as Judges of Circuit, to hold gaol deliveries twice a year, to perform all duties theretofore discharged by the Superintendents of Police, and to be under the authority of the Nizamut Adawlut.[8] The Courts of Circuit were at the same time abolished.[9]

The Native officers were invested with an extended jurisdic-

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[1] Reg. VII. 1819, ss. 2, 3.
[2] Reg. VII. 1819, s. 7.
[3] Reg. III. 1821, ss. 2, 3, 4.
[4] Reg. XII. 1825, s. 3.
[5] Reg. XII. 1825. s. 4.
[6] Reg. XII. 1825, s. 7.
[7] Reg. XVI. 1825.
[8] Reg. I. 1829.
[9] Reg. I. 1829, s. 5.

tion in criminal matters in 1831, when it was declared that Magistrates might refer any criminal case to a Sudder Ameen or Principal Sudder Ameen for investigation, though, they were not authorised to make any commitment.[1] In the same year the Zillah and City Judges, not being Magistrates, were empowered to conduct the duties of the Sessions, to try commitments made by Magistrates, and to hold monthly gaol deliveries, and to pass sentence or to refer the trials to the Nizamut Adawlut, under the same rules applicable to Commissioners of Circuit; but they were not to interfere with the management of the Police, and all appeals from the orders of the Magistrates lay to the Commissioners of Circuit.[2]

In 1832 some important alterations took place. The Principal Sudder Ameens, Sudder Ameens, and law officers, were authorised to sentence persons convicted of theft to labour, in addition to corporal punishment and imprisonment.[3] The Commissioners of Circuit and Sessions Judges were ordered not to try persons who did not profess the Muhammadan faith for offences cognizable under the general Regulations according to the provisions of the Muhammadan Criminal law; and the Judges or Commisioners were at the same time instructed to refer cases to Panchayits, or to respectable Natives who should sit during trials as assessors, or more in the nature of a jury; and they were authorised in such cases to dispense with a Fatwa, but the decision was to rest entirely with the Judge.[4] The Nizamut Adawlut was also empowered to exercise an absolute discretion as to requiring a Fatwa from the law officers of the Court.[5]

Corporal punishment was absolutely abolished in 1834, excepting where moderate chastisement was necessary for the maintenance of gaol disipline, and imprisonment was ordered to be substituted[6]: labour was also made commutable to fine.[7]

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[1] Reg. V. 1831, s. 18.
[2] Reg. VII. 1831.
[3] Reg. II. 1832, s. 3.
[4] Reg. VI. 1832, ss. 1—5.
[5] Reg. VI. 1832, s. 6.
[6] Reg. II. 1834, s. 2.
[7] Reg. II. 1834, s. 3.

The former provision was, however, afterwards modified, and Magistrates were empowered to inflict not exceeding thirty ratans for theft under 50 rupees, but in such case no other punishment was to be superadded.[1]

In 1835 it was enacted that all or any part of the duties and powers of Commissioners of Circuit might be transferred by the Governors of Bengal and Agra respectively to the Sessions Judges.[2]

In the year 1841 it was enacted that crimes against the State should be tried by the ordinary tribunals, and that the Government might issue a commission to the Judges for their trial; their sentences and proceedings to be reported to the Nizamut Adawlut, who were to report their sentences to the Government for confirmation.[3] In the same year it was enacted that from every sentence or order in criminal trials or proceedings within the limitations prescribed by Regulation IX. of 1793, passed by Assistants to Magistrates, Sudder Ameens, or law officers, one appeal should be permitted within one month to the Magistrates or Joint Magistrates; and from every sentence or order beyond such limitation, passed by a Magistrate or Joint Magistrate, or Assistant to a Magistrate vested with special powers, one appeal should be permitted within one month to the Sessions Judge; and from every such sentence or order of the latter, there should be permitted one appeal within three months to the Nizamut Adawlut, and that the sentences or orders passed on such appeals should be final.[4] It was, however, also enacted[5] (and re-enacted in 1848)[6], that the Nizamut Adawlut might, whenever it should think fit, call for the whole record of any criminal trial in any subordinate Court, and pass such orders thereon as it should think fit, but not so as to enhance the punishment awarded, or punish any person acquitted, by the subordinate Court.

In 1843 it was enacted that in cases of conviction of British subjects by Justices of the Peace in the Mofussil or Magis-

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[1] Act III. 1844, s. 1.
[2] Act VII. 1835.
[3] Act V. 1841.
[4] Act XXXI. 1841, s. 2.
[5] Act XXXI. 1841, ss. 3, 4.
[6] Act XIX. 1848, s. 4.

trates, under the 53d Geo. III. c. 155. s. 105, an appeal should lie from the sentences of such Justices of the Peace or Magistrates, according to the same rules as are provided by the Regulations and Acts of Government in the case of sentences passed by Magistrates in the exercise of their ordinary jurisdiction, and cases so appealed were not to be afterwards liable to revision by means of a writ of Certiorari.[1]

(c) *Police Establishment.*

The Police establishment in the Bengal Presidency remains at the present day nearly in the same state as when first established by Lord Cornwallis; but some few circumstances and modifications may be remarked.

In the year 1795 the Police of Benares was placed under the management of the Tahsíldárs, landowners, and fármers, who were made responsible for robberies committed within the limits of their estates, excepting night robberies on the open roads or in woods.[2] In 1803 the same plan was extended to the ceded provinces[3], and in 1804 to the conquered provinces.[4]

The Tahsíldárí system being found, however, to be objectionable, all the above places were, in the year 1807, divided into Police jurisdictions, nearly in the same way as had been already adopted throughout Bengal, Behar, and Orissa.[5] In all these instances the cities and towns were placed under the guard of Dárógháhs and Kútwáls. Ameens of Police were appointed in the same year in all the Bengal provinces, for the apprehension of persons charged with heinous offences.[6]

A Superintendent of Police, being a covenanted servant of the Company, was established in 1808, for the provinces of Bengal and Orissa, but more especially for Calcutta, Moorshedabad, and Dacca. This Superintendent was to possess a concurrent jurisdiction with the Zillah and City Magistrates, and to be under the authority of the Nizamut Adawlut in Police

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[1] Act IV. 1843.
[2] Reg. XVII. 1795.
[3] Reg. XXXV. 1803.
[4] Reg. IX. 1804, s. 9.
[5] Reg. XIV. 1807.
[6] Reg. XII. 1807 and Reg. XIV. 1807.

matters.[1] In 1810 his jurisdiction was extended to Patna, and at the same time a second Superintendent was appointed for Benares and Bareilly.[2]

The duties of these Superintendents were defined and enlarged in 1816, when, in addition to the management of the whole system of Police being committed to their care, they were directed to submit to the Government annual reports of all Police occurrences and statements of the Police establishments in their respective districts.[3]

A general revision of the whole system of Police, not, however, effecting any material alteration in the previous establishment, took place in the following year, and a Regulation was passed[4], which, as Harington observes, may be called "The Police Officers, Manual in the Provinces subject to the Presidency of Fort William."[5] This Regulation still further defines the duties of the Superintendents, and the relative authorities and functions of the subordinate officers, who were to preserve the peace within the limits of their jurisdictions, to prevent, so far as possible, all criminal offences, to apprehend offenders, and to report all occurrences connected with the Police to the Magistrates. The Dáróghah was empowered to hold inquests in cases of suspicious death, to search for stolen property, to suppress riots and affrays, to apprehend persons resisting process, to report burglaries, and to direct particular attention to suppression of Dakoity and illegal Satí. He was to forward all persons apprehended by him, and charged with crimes or offences, to the Magistrate. The Muharrir, who was the second officer of the Thanah, was authorised to exercise the powers vested in the Dáróghah in the absence of that officer, as was also the Jamadár, or third officer, in the absence of the Muharrir and Dáróghah.[6] The village watchmen were also enjoined to report to the Thanah all Police occurrences, and to apprehend offenders.[7]

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[1] Reg. X. 1808.
[2] Reg. VIII. 1810.
[3] Reg. XVII. 1816.
[4] Reg. XX. 1817.
[5] Harington's Analysis, p. 464, 2d edit.
[6] Reg. XX. 1817, s. 4.
[7] Reg. XX. 1817, s. 21.

No further alteration of importance took place until the year 1829, when the office of Superintendent of Police was abolished, and the duties of the Superintendents were assumed by the Commissioners of Circuit already described[1].

The Governor of Bengal, or the Lieutenant Governor of the North-Western Provinces, were empowered, in the year 1837, to appoint Superintendents of Police for the territories under their respective Governments, who were to be guided in the execution of their duties by the rules contained in Regulation X. of 1808; and on such appointment the Commissioners of Circuit were to cease to exercise the powers of Superintendents of the Police vested in them by Regulation I. of 1829[2], and the said Superintendents were empowered to exercise all the powers exercised by the Commissioners of Circuit.

2. Madras.

(1) Origin of the Adawlut System.

The present Madras system for the administration of justice is founded on that introduced during the Government of the son of the great Lord Clive in the year 1802, and which was framed upon that of Bengal. Following the plan I have already traced out, I shall describe shortly, in the first place, the system of 1802, and then proceed to mention succinctly the changes that have taken place up to the present time, treating separately of the three departments, Civil, Criminal, and Police.

(2) System of 1802.

The system of 1802 presents little or no variation from that of Lord Cornwallis. It was determined that the offices of Judge and Magistrate, and of Collector of the Revenue, should be held by distinct persons. Native Commissioners were appointed, with power to try suits not exceeding in value 80

[1] Reg. I. 1829.

[2] Act XXIV. 1837, ss. 1—4.

rupees: an appeal lay to the Judge.[1] The Registers of the Zillah Courts had jurisdiction to try suits, original or on appeal from the Native Commissioners, referred to them by the Judge, when the property in dispute did not exceed 200 rupees: their decisions were final to the amount of 25 rupees: above that sum an appeal lay to the Zillah Judge.[2] A summary appeal also lay to the Zillah Judge in cases where the Registers refused to admit or investigate appeals from the decisions of the Native Commissioners on the ground of delay or informality.[3] The Zillah Courts, presided over respectively by one Judge, assisted by native law officers, were established in the various districts in which the land revenue had been settled in perpetuity, for the decision of civil suits.[4] The decisions of the Zillah Courts were final in suits under 1000 rupees in value[5]; but when above that amount an appeal lay to the Provincial Courts of Appeal.[6] The Provincial Courts were four in number, and were to try appeals from the Zillah Courts, and original suits referred to them by the Sudder Adawlut: their decisions were final in suits where the amount in dispute did not exceed 5000 rupees, but above that sum, and in cases where they refused to admit regular appeals from the Zillah Courts for delay or other informality, a summary appeal lay to the Sudder Adawlut.[7] The Provincial Courts were also empowered to take cognizance of appeals which the Zillah Courts had refused to admit, or dismissed without investigation on the ground of delay, informality, or other default.[8] The Sudder Adawlut consisted of the Governor in Council[9]; and from its decisions in civil suits of the value of 45,000 rupees and upwards an appeal lay to the Governor-General in Council.[10]

The plan introduced for the administration of criminal justice, was much the same as that in Bengal: Magistrates and Assistant Magistrates were appointed, and were directed to

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[1] Reg. XVI. 1802, ss. 2. 18.
[2] Reg. XII. 1802, ss. 6. 9, 10.
[3] Reg. IV. 1802, s. 12.
[4] Reg. II. 1802, ss. 1—3.
[5] Reg. II. 1802, s. 21.
[6] Reg. IV. 1802, s. 12.
[7] Reg. V. 1802, s. 10.
[8] Reg. IV. 1802, s. 12.
[9] Reg. V. 1802, s. 2.
[10] Reg. V. 1802, ss. 31—36.

apprehend persons charged with crimes or offences, and to bring them to trial; and they had powers of inflicting punishment in cases of abuse and assault, and petty theft, by imprisonment, corporal punishment, or fine, which was in no case to exceed 200 rupees.[1] British subjects residing in the provinces, and charged with criminal offences, were to be apprehended by the Magistrates, and sent for trial to the Supreme Court at Madras.[2] Four Courts of Circuit were established for the trial of crimes and offences[3]: the Judges were to hold half yearly gaol deliveries[4], and they were empowered to pass sentence in capital cases, but such sentences were to be referred for confirmation to the Foujdary Adawlut.[5] The Foujdary Adawlut, or Chief Criminal Court, consisted of the Governor and members of the Council[6], and had cognizance of all matters relating to Criminal Justice and the Police[7], and the power of passing final sentence in capital cases. The Governor in Council was empowered to pardon convicts, or commute their punishment.[8] All these Criminal Courts administered the Muhammadan law as modified by the Regulations.

No general system of Police was introduced in the Madras Presidency by the Regulations of 1802. The Police establishments in the several provinces remained of much the same nature as under the Native Governments. In some districts, the Northern Circars for instance, little more than traces of a regular system were discoverable, though almost everywhere village watchers existed, who acted under the superintendence of the head men of the villages.

A Regulation was passed in 1802 for the establishment of a more efficient system in the Zillah of Chingleput (the Company's Jágír), one of the most ancient of the British Settlements on the Coromandel coast. By this Regulation, upon which was based the system in force throughout the Madras Presidency till altered in 1816, the Police of

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[1] Reg. VI. 1802, ss. 8, 9.
[2] Reg. VI. 1802, s. 19.
[3] Reg. VII. 1802, s. 2.
[4] Reg. VII. 1802, s. 11.
[5] Reg. VII. 1802, s. 27.
[6] Reg. VIII. 1802, s. 3.
[7] Reg. VIII. 1802, s. 8.
[8] Reg. VIII. 1802. s. 14.

the Zillah of Chingleput, then called Carangooly, was taken out of the hands of the Poligars and Kavilgars, and assigned to officers nominated by the East-India Company's Government. Police Dáróghahs were appointed to superintend and controul entire divisions; Thanahdárs, under their orders, to superintend the stations in each division; and Watchers, who were to execute the duties of Police in the roads and villages of each division: the Officers of Police were to be subject to the authority of the Judge and Magistrate of the Zillah.[1] The Watchmen were to apprehend offenders, and deliver them to the Thanahdárs[2], who were also empowered to apprehend offenders and send them to the Dáróghahs[3]: these latter in their turn were likewise authorised to apprehend suspected persons, whom they were to convey before the Magistrate, but they were not to inflict any punishment.[4]

Such was the original constitution of the Courts of Justice and the Police in the Madras Presidency. I shall now separately enumerate the alterations that have been made in the various departments since the year 1802.

(3) Alterations since 1802.

(*a*) *Civil Judicature.*

The first change worthy of notice in the department of Civil Judicature took place in the year 1806, when Zillah Courts were established in the districts to which the permanent settlement had not been extended.[5] The constitution of the Sudder Adawlut was also altered and new Judges appointed[6]; and in the following year[7] the Governor was declared no longer to be a Judge of the Court. The Court has been since modified, and made to consist, as in Bengal, of such number of Judges as the Governor in Council might deem requisite.[8]

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[1] Reg. XXXV. 1802, s. 3.
[2] Reg. XXXV. 1802, s. 8.
[3] Reg. XXXV. 1802, s. 13.
[4] Reg. XXXV. 1802, s. 21.
[5] Reg. II. 1806.
[6] Reg. IV. 1806.
[7] Reg. III. 1807.
[8] Reg. III. 1825.

In 1809 a Regulation[1] was passed for the occasional appointment of Assistant Judges of the Zillah Courts, and for altering and extending the jurisdiction of the Registers of those Courts, whose power of final decision was, however, abolished.[2] The decision of a Zillah Judge, confirming on appeal the decree of the Register, was final; but if reversing the Register's decree, or disallowing a sum exceeding 100 rupees, a further appeal lay to the Provincial Court.[3] The appointment of head Native Commissioners or Sudder Ameens was authorised, who were to try referred causes to the amount of 100 rupees.[4] The decrees of the Zillah Judges were declared to be final in all appeals from decisions passed by the Native Commissioners; but an appeal was ordered to lie to the Provincial Courts, from the decisions of the Zillah Judges, in all suits tried by them in the first instance.[5] In this year the Provincial Courts were also authorised to admit summary appeals from the orders of the Zillah Courts refusing to admit or investigate original suits on the ground of delay, informality, or other default[6]; and they were empowered to admit a special appeal in all cases where a regular appeal might not lie to them from the decrees of the Zillah Judges, if such decrees appeared erroneous or unjust, or if the cause appeared to be of sufficient importance to merit further investigation.[7] These powers of admitting special appeals by the Provincial Courts were also made applicable to the Sudder Adawlut with respect to decrees passed by the Provincial Courts not open to the regular appeal.[8] In the same year the Provincial Courts were given original jurisdiction in suits above 5000 rupees, which had been previously cognizable by the Zillah Courts.[9]

In 1816 the Heads of Villages were appointed to be Moonsiffs, with a power to try and finally determine suits not exceeding 10 rupees in value[10]; and they were also authorised to assemble Village Panchâyits for the adjudication of civil suits

[1] Reg. VII. 1809.
[2] Reg. VII. 1802, s. 6.
[3] Reg. VII. 1809, s. 8.
[4] Reg. VII. 1809, s. 9.
[5] Reg. VII. 1809, ss. 23, 24.
[6] Reg. VII. 1809, s. 25.
[7] Reg. VII. 1809, s. 26.
[8] Reg. VII. 1809, ss. 28, 29.
[9] Reg. XII. 1809, ss. 2, 3.
[10] Reg. IV. 1816, ss. 2. 5.

of any amount within their village jurisdictions. On proof of partiality the Provincial Courts were empowered to annul the decisions of the Pancháyits; but if referred to a second Pancháyit, and the second decision should agree with the former one, such decision was final.[1] In the same year District Moonsiffs were empowered to take cognizance of suits to the amount of 200 rupees.[2] The decisions of the District Moonsiffs, in suits where the amount in dispute did not exceed 20 rupees, were final; but above that sum an appeal lay to the Zillah Courts.[3] In cases of inheritance, or succession to landed property, between Hindú or Muhammadan parties, the District Moonsiffs were directed to obtain an exposition of the laws from the law officers of the Zillah Courts.[4] The District Moonsiffs were also empowered to assemble District Pancháyits for the adjudication of civil suits of any amount, their decision to be appealable or final by similar rules to those above mentioned as applicable to Village Pancháyits.[5] In this year the jurisdiction of Sudder Ameens was extended, in suits referred to them, to the amount of 300 rupees[6], an appeal lying from their decisions to the Zillah Judge. The Sudder Adawlut was in the same year empowered to call up from the Provincial Courts, and try in the first instance, suits for 45,000 rupees and upwards,[7] the then appealable amount to the Privy Council, but which has been since altered, as will be mentioned in a subsequent section. The Sudder Adawlut was also authorised to admit a summary appeal from the Provincial Courts in all cases where such Courts had refused to admit or investigate suits, original or in appeal, on the ground of delay, informality, or other default. The Provincial Courts and the Zillah Judges were in like manner, respectively, to be competent to admit summary appeals from the orders of the Zillah Judges or the Registers and Sudder Ameens.[8] The Provincial Courts were also debarred from admitting regular appeals

[1] Reg. V. 1816, ss. 2—11.
[2] Reg. VI. 1816, s. 11.
[3] Reg. VI. 1816, s. 43.
[4] Reg. VI. 1816, s. 62.
[5] Reg. VII. 1816, ss. 2—11.
[6] Reg. VIII. 1816, s. 7.
[7] Reg. XV. 1816, s. 2.
[8] Reg. XV. 1816, s. 5.

from decisions passed by Zillah Judges, on appeals from their Registers: it was provided, however, that they might admit special appeals from the decisions of the Zillah Judges in regular appeals from original judgments of Registers, Sudder Ameens, and Moonsiffs.[1] At the same time all original suits tried by Provincial Courts were made appealable to the Sudder Adawlut.[2]

In the year 1818 the Governor-General formally relinquished his right of hearing appeals from the Sudder Adawlut at Madras; and a Regulation was framed on Beng. Reg. XVI. of 1797, for the conduct of appeals to England from the Sudder Adawlut.[3] This will be again noticed in another place.

In 1820 the 53d Geo. III. c. 155, was ordered to be in part promulgated at Madras, and translated into the country languages. Under this Statute the Company's Courts were given a jurisdiction in civil suits brought by Natives against British subjects residing, trading, or holding immoveable property in the inferior. An appeal lay in such cases either to the Supreme Court, or to the Sudder Adawlut.[4]

The jurisdictions of Registers, Sudder Ameens, and District Moonsiffs were, in 1821, extended, respectively, to suits of the value of 1000, 750, and 500 rupees.[5]

In 1827 Auxiliary Zillah Courts were established, to be superintended by Assistant Judges, who, it may be here remarked, have been termed, in succeeding enactments, Subordinate Judges, and not Assistant Judges. Sudder Ameens, being Natives, were also appointed in such Courts, with the same powers as those given to Sudder Ameens by Regulation VIII. of 1816. The Assistant Judges had original jurisdiction to the amount of 5000 rupees; and they were also to try appeals from the decisions of the Moonsiffs. An appeal lay from the decisions of the Assistant Judges in suits exceeding 1000 rupees in value, to the Zillah Courts; but above that amount to the Provincial Courts. An appeal was also directed to lie from the original decisions of the Sudder Ameens, and a special

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[1] Reg. XV. 1816, s. 3.
[2] Reg. XV. 1816, s. 6.
[3] Reg. VIII. 1818.
[4] Reg. II. 1820.
[5] Reg. II. 1821, ss. 2—4.

appeal from their decisions in appeals from Moonsiffs, to the Assistant Judges.[1] Native Judges were appointed in the same year to try suits referred to them by the Assistant Judges, but not to have jurisdiction over Europeans or Americans.[2] Special appeals were also made admissible in 1827 as follows: viz. from the decrees of Assistant or Native Judges on appeals from Sudder Ameens, to the Zillah Courts; from decrees of Zillah Judges on appeals from Assistant or Native Judges, to the Provincial Courts; from decrees of the Provincial Courts on appeals from Assistant or Native Judges, to the Sudder Adawlut.[3]

In 1833 the jurisdiction of Registers was extended to 3000 rupees, of Sudder Ameens to 2500 rupees, and of District Moonsiffs to 1000 rupees.[4]

In 1836 it was enacted that the 107th section of the 53d Geo. III. c. 155, which gave to British subjects in the provinces a right of appeal from the Mofussil Courts to the Supreme Court, should cease to have effect it India; and it was also enacted that no person by reason of birth or descent should be exempted from the jurisdiction of the Company's Courts[5], or be incapable of being a Principal Sudder Ameen (as the Native Judges were then directed to be entitled), Sudder Ameen, or Moonsiff.[6]

Summary appeals were declared, in 1838, to be admissible from the orders of District Moonsiffs refusing to admit or investigate suits cognizable by them, on the ground of delay, informality, or other default, by the Zillah Judges, Assistant Judges of Auxiliary Courts, and Principal Sudder Ameens.[7]

In 1843 it was enacted that special appeals should lie to the Sudder Adawlut from all decisions passed on regular appeals in all Subordinate Civil Courts, when it should appear that such decisions were inconsistent with law or usage, or the practice of such Courts, or involved doubtful questions of law, usage, or practice.[8] In the same year a most important Act

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[1] Reg. I. 1827, ss. 2—7.
[2] Reg. VII. 1827.
[3] Reg. XI. 1827.
[4] Reg. III. 1833, ss. 3—5.
[5] Act XI. 1836.
[6] Act XXIV. 1836, ss. 1—5.
[7] Act XVII. 1838.
[8] Act III. 1843, s. 1

was passed, which placed the administration of justice in Madras on its present footing. By this Act the Provincial Courts of Appeal were abolished, and new Zillah Courts were established, presided over by one Judge, to perform their functions, and to replace the Zillah Courts then existing.[1] The original jurisdiction vested in the Provincial Courts for amounts of less value that 10,000 rupees, was transferred to Subordinate Zillah Courts, constituted according to Regulations I. and VII. of 1827[2]; and such Courts were to have jurisdiction over Europeans and Americans as well as Natives.[3] The new Zillah Courts were to entertain appeals from the decrees of the Subordinate Civil Courts, and of Sudder Ameens and District Moonsiffs[4]; and appeals from the new Zillah Courts lay to the Sudder Adawlut.[5] No Registers were assigned to the new Zillah Courts, and consequently the Registers' Courts no longer exist. Summary appeals were directed to lie to the new Zillah Courts from the Subordinate Judges and Principal Sudder Ameens[6], and from the new Zillah Courts to the Sudder Adawlut.[7]

In 1844 it was enacted that all suits within the competency of Principal Sudder Ameens and Sudder Ameens to decide, should be ordinarily instituted in their Courts; but that they might be withdrawn at the will of the Zillah Judges, who might try them themselves, or refer them to any other competent Subordinate Court. The Zillah Judges were also empowered to admit summary appeals from the orders of Principal Sudder Ameens and Sudder Ameens, rejecting suits cognizable by them on the ground of any default.[8]

(*b*) *Criminal Judicature.*

The first alteration in the system of criminal judicature established at Madras in 1802, was in the constitution of the Foujdary Adawlut, which was changed in accordance with the provisions of the Bengal Regulations with respect to the Niza-

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[1] Act VII. 1843, s. 1.
[2] Act VII. 1843, s. 4.
[3] Act VII. 1843, s. 5.
[4] Act VII. 1843, s. 8.
[5] Act VII. 1843, s. 9.
[6] Act VII. 1843, s. 8.
[7] Act VII. 1843, s. 9.
[8] Act IX. 1844, ss. 1, 2. 4.

mut Adawlut,[1] In the year 1811 Magistrates were given an extended jurisdiction, and were empowered to inflict punishment on persons convicted by them, by imprisonment not exceeding one year with corporal punishment not exceeding thirty ratans, or by fine of 200 rupees.[2] This power was not to be exercised by their Assistants.[3]

In 1816 the offices of Zillah Magistrate and Assistant Magistrate were transferred from the Judge to the Collectors of the Zillahs and the Assistants to the Collectors[4]; and the Magistrates were empowered to apprehend offenders, and in certain cases to pass judgment, to be referred to the Foujdary Adawlut.[5] They were also authorised to punish persons guilty of petty thefts, and other minor offences, by stripes not exceeding eighteen ratans, imprisonment not exceeding fifteen days, or fine not exceeding 50 rupees[6]; in other cases to send them for trial to the Criminal Judge of the Zillah.[7] In the same year the Judges of the Zillah Courts were appointed to be Criminal Judges of their respective Zillahs, with power to punish offenders, in some cases, with stripes not exceeding thirty ratans; and, in cases of theft, in addition, with imprisonment not exceeding six months; in other cases with fine not exceeding 200 rupees[8]; but prisoners charged with more serious offences, were to be committed for trial to the Courts of Circuit.[9] The Criminal Judges were also invested with similar powers to those before exercised by the Zillah Magistrates.[10]

The Zillah Magistrates were, in 1818, empowered to delegate the whole or any part of their authority to their Assistants.[11]

By the 53d Geo. III. c. 155, s. 105, which was passed in 1813, and which was ordered to be in part promulgated at Madras in 1820, Zillah Magistrates were given a jurisdiction over British subjects residing in the interior, for assaults and

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[1] Reg. IV. 1806, and Reg. III. 1807.
[2] Reg. IV. 1811, s. 13.
[3] Reg. IV. 1811, s. 12.
[4] Reg. IX. 1816, ss. 3, 4.
[5] Reg. IX. 1816, s. 18.
[6] Reg. IX. 1816, ss. 32, 33. 35.
[7] Reg. IX. 1816, s. 34.
[8] Reg. X. 1816, ss. 2. 7.
[9] Reg. X. 1816, s. 9.
[10] Reg. X. 1816, s. 39.
[11] Reg. IX. 1818.

trespasses against Natives; their convictions, however, in such cases were removeable by Certiorari to the Supreme Court.[1]

In 1822 the Criminal Judges were authorised to take cognizance of burglary, and if not attended with violence to punish the offenders with thirty stripes and imprisonment with hard labour for two years; but if accompanied with violence, to commit them to the Court of Circuit. On such commitment the Court of Circuit was empowered to punish the offenders by thirty-nine stripes, and imprisonment in banishment for fourteen years, if the burglary were not attended with attempt to murder or wounding; but otherwise, on conviction, the trial was to be referred to the Foujdary Adawlut.[2] The Criminal Judges were likewise empowered to punish for theft exceeding 50 rupees, and not attended with attempt to murder or with wounding, by imprisonment with hard labour for two years and thirty ratans; but otherwise, to refer the trial to the Circuit Judge.[3] The Criminal Judges were also authorised in certain cases to try and punish offenders for receiving or purchasing stolen goods[4], and convicts escaping from gaol.[5]

Thefts exceeding 300 rupees were, in 1825, declared not to be cognizable by the Criminal Judge, who was to commit offenders in such cases to the Court of Circuit.[6]

The Assistant Judges appointed under Regulation I. of 1827, were constituted Joint Criminal Judges of their Zillahs; and Subordinate Collectors exercising the powers of Magistrates were directed to be called Joint Magistrates.[7] The Native Judges appointed under Regulation VII. of 1827 were constituted Native Criminal Judges in the same year, and were ordered to be guided by the same rules as Criminal Judges, and invested with the same powers as Magistrates, but without jurisdiction over any Europeans or Americans[8]; they were afterwards, in 1836, designated Principal Sudder Ameens.[9] In 1827

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[1] Reg. II. 1820.
[2] Reg. VI. 1822, s. 2.
[3] Reg. VI. 1822, s. 3.
[4] Reg. VI. 1822, s. 4.
[5] Reg. VI. 1822, s. 5.
[6] Reg. I. 1825, s. 9.
[7] Reg. II. 1827, ss. 2—5.
[8] Reg. VIII. 1827.
[9] Act XXIV. 1836, s. 1.

a Regulation was also passed[1] for the gradual introduction of the trial by jury into the criminal judicature, and it was declared to be unnecessary for either the Judge of Circuit, or the Foujdary Adawlut, to require a Fatwa from their law officers as to the guilt of the prisoner, that being established by the verdict of the jury.[2]

In the year 1828 the use of the ratan was abolished, and the cat-of-nine-tails substituted[3]; and in 1830 the korah was also discontinued, and a like substitution ordered.[4] Females were exempted from punishment by flogging in 1833.[5]

Magistrates, Criminal, Joint Criminal, and Native Criminal Judges were, in 1832, respectively empowered to adjudge solitary imprisonment in all cases cognizable by them.[6]

In the year 1833 Criminal, Joint Criminal, and Native Criminal Judges were authorised to employ the Sudder Ameens in the investigation and decision of criminal cases, except in cases committable for trial before the Court of Circuit; such Judges to have power to overrule the decisions of the Sudder Ameens, who were, moreover, not to have any jurisdiction over Europeans or Americans.[7]

In 1837 the Magistrates were authorised to send persons, not being Europeans or Americans, for trial, commitment, or confinement, to the Principal Sudder Ameens.[8]

The Foujdary Adawlut was empowered in 1840 to dispense altogether with the Fatwa, but not with the Muhammadan law.[9]

In the year 1841 it was enacted that state offences should be triable by the ordinary criminal tribunals, but the sentences and proceedings in such cases were directed to be reported to the Foujdary Adawlut, who were again to refer their sentences to the Government for confirmation.[10]

In 1843 sentences passed by Justices of the Peace in the Mofussil, or Magistrates, on British subjects residing in the

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[1] Reg. X. 1827.
[2] Reg. X. 1827, s. 33.
[3] Reg. VIII. 1828.
[4] Reg. II. 1830.
[5] Reg. II. 1833.
[6] Reg. XIII. 1832, s. 4.
[7] Reg. III. 1833, s. 2.
[8] Act XXXIV. 1837.
[9] Act I. 1840.
[10] Act V. 1841.

provinces, for assaults and trespasses against Natives of India, under the 53d Geo. III. c. 155, s. 105, were made appealable in the regular course, according to the Regulations and Acts of Government, in the same manner as ordinary sentences passed in the ordinary exercise of a Magistrate's jurisdiction; and when so appealed, they were no longer to be liable to revision by Certiorari.[1] The Judges of the new Zillah Courts established in the same year were empowered to exercise all the powers of the Judges of the Courts of Circuit[2], which were then abolished; and they were directed to hold permanent sessions, for the trial of all persons accused of crimes formerly cognizable by the Courts of Circuit.[3] The Sessions Judge was empowered, when he chose, to call in the aid of Natives to sit as assessors in trials or as jurors: if he should differ from such assessors or jurors, it was provided that in all cases a reference should lie to the Foujdary Adawlut.[4] He also had the power of overruling criminal sentences of Sudder Ameens.[5] The criminal jurisdiction of the Zillah Courts constituted by the Regulations was transferred to the Subordinate Criminal Courts established under Regulations II. and VIII. of 1827.[6] It may be added, that the Assistant Judges constituted under Regulation II. of 1827, and who were to take the functions of the Criminal Judges, were, and are now, called Subordinate Judges. The power of the Magistrates was also extended in this year, and they were authorised to exercise the powers vested in Criminal Judges by Regulation X. of 1816 concurrently with the Subordinate Criminal Courts[7]: an appeal however was directed to lie from their sentences within one month to the Sessions Judge.[8]

(c) *Police Establishment.*

In 1816 the first Regulation was passed for the organi-

[1] Act IV. 1843.
[2] Act VII. 1843, s. 26.
[3] Act VII. 1843, s. 27.
[4] Act VII. 1843, s. 32.
[5] Act VII. 1843, s. 36.
[6] Act VII. 1843, s. 1.
[7] Act VII. 1843, s. 54.
[8] Act VII. 1843, s. 55.

zation of a general system of Police throughout the territories subject to the Government of Fort St. George. The establishments of Dáróghahs and Thanahdárs were abolished; and the duties of Police were directed to be discharged by the Heads of Villages, aided by Karnams or Village Registers, and Talliars and other Village Watchers; the Tahsíldárs or Native Collectors, with the assistance of Péshkárs, Gumáshtahs, and establishments of Peons; Zamíndárs; Ameens of Police; Kútwáls and their Peons; and the Magistrates of Zillahs and their Assistants.[1] The Heads of Villages were to apprehend offenders, and forward them to the Police Officer of the district[2], except in trivial cases of abuse and assault, when they had a limited power of punishment by confinement not exceeding twelve hours.[3] The Tahsíldárs were to be Heads of the Police of their districts; they were to apprehend persons charged with heinous offences, and after investigation to forward the prisoners and a report of their proceedings to the Criminal Judge[4], and in cases of trivial abuse or assault to inflict slight punishment, extending to a fine of one rupee or confinement for twenty-four hours.[5] Magistrates were in certain cases to invest Zamíndárs with police authority[6], and to appoint Ameens of Police in large towns, to be under their immediate authority or that of the Tahsíldárs, and to be invested with the same powers, either as Heads of Villages or Tahsíldárs, as might be expedient.[7] The Magistrates and their Assistants were charged generally with the maintenance of the peace in their respective Zillahs.[8]

In the year 1821 Police Ameens were given a jurisdiction beyond the limits of the towns for which they were appointed[9]; and the Magistrates were empowered to select subordinate officers to make inquiry into offences, hold inquests, and perform the duties before assigned to Tahsíldárs and other head officers of Police, but without any power of inflicting punishment.[10]

[1] Reg. XI. 1816, s. 3
[2] Reg. XI. 1816, s. 5.
[3] Reg. XI. 1816, s. 10.
[4] Reg. XI. 1816, s 27.
[5] Reg. XI. 1816, s. 33.
[6] Reg. XI. 1816, s. 39.
[7] Reg. XI. 1816, s. 40.
[8] Reg. XI. 1816, s. 47,
[9] Reg. IV. 1821, s. 2.
[10] Reg. IV. 1821, s. 3.

The Heads of District Police were authorised to hear and determine cases of petty theft, and to inflict moderate punishment, extending to six stripes, on conviction, or to forward the offenders to the Magistrate.[1] The power of fining possessed by Tahsíldárs was increased to three rupees.[2] The Heads of Villages were also empowered to punish petty thefts, as well as other trivial offences, by imprisonment for twelve hours.[3]

In 1832 the powers of Heads of District Police were extended to imprisonment for ten days, with labour, but they were no longer to inflict corporal punishment.[4] And in 1837 they were also empowered to forward to the Magistrate, for punishment, offenders convicted of any offence cognizable by them, as well as petty thefts.[5]

3. Bombay.

(1) Rise and Progress of the Adawlut System.

On the acquisition by conquest in the year 1774 of the islands of Salsette and Caranja, and their dependencies of Hog and Elephanta, provision was made for the government of the former by the appointment of a Resident or Chief and Factors, and for the latter by that of a single Resident, with instructions from the Presidency of Bombay that disputes should be decided by arbitration, until the introduction of a more detailed regulation.

In the year 1794 the Court of Directors transmitted to the Presidency of Bombay a copy of the Regulations proposed by Lord Cornwallis for the internal Government of the Bengal Provinces. To this communication the Government of Bombay replied, in the following year, that they were clearly of opinion it would contribute greatly to the ease and happiness of the Natives if Courts of Adawlut were established in Bombay, Salsette, and Caranja.

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[1] Reg. IV. 1821, s. 4.
[2] Reg. IV. 1821, s. 5.
[3] Reg. IV. 1821, s. 6.
[4] Reg. XIII. 1832, s. 5.
[5] Act XXXIII. 1837, s. 1.

Previously, however, to the introduction of these Adawlut Courts it appeared necessary to consult the best legal opinions, and also to have the sanction of the Supreme Government in respect to the competency of that of Bombay to establish rules for the administration of justice in the above-named places, under the same independence, as to the interposition of His Majesty's Court, as the Judicial Regulations of the Governor-General in Council were with regard to the controul of the Supreme Court at Fort William.

The Advocate-General of Bengal having been consulted, gave his opinion that there was no objection to the establishment of the Courts of Justice for the islands above named by the concurring Authorities of the Supreme Government and that of Bombay; and accordingly in the year 1797 the Governor-General in Council recommended and authorised the Bombay Government to constitute Courts of Civil and Criminal Judicature, on principles similar to those on which the Courts in the Presidency of Bengal had been established.

In the year 1799, during the Government of Mr. Duncan, a regular Code of Regulations was framed in compliance with these instructions, and in that year, and subsequently, a series of Courts were established on the system introduced by Lord Cornwallis into Bengal, as nearly as local circumstances would admit, with this important distinction, however, in the administration of criminal justice, that whereas in Bengal the Muhammadan criminal law was alone applicable, in the Bombay Presidency Hindús were tried according to their own laws, and Christians and Pársís had the benefit of the English laws in all criminal cases.[1] Judges' and Magistrates' Courts and Courts of Sessions were constituted at Tannah[2] and Surat[3]; the Magistrates were authorised to inflict imprisonment not exceeding fifteen days, or fine extending to 100 rupees, in trivial cases of abuse, assault, or affray, and to inflict thirty ratans, or one month's imprisonment in

[1] Reg. V. 1799, s. 36, and Reg. III. 1800. s. 36.
[2] Reg. III. 1799, and Reg. V. 1799.
[3] Reg. I. 1800, and Reg. III. 1800.

cases of petty theft.[1] The Registers of the Civil and Criminal Courts were invested with limited judicial powers to the extent of 200 rupees, but their decisions were not valid unless countersigned by the Judge[2]; and Native Commissioners were appointed for the trial of referred cases not exceeding 50 rupees in value, and to act as Arbitrators: an appeal lay from their decisions to the Judge.[3] Over all these Courts the Governor in Council, in the separate department of Sudder Adawlut and as Head of Criminal Judicature, had a right of supervision and controul, an appellate jurisdiction[4], and a power of exercising pardon or mitigation of punishment.[5]

The decisions of the Register at Surat were, in 1802, made final in suits not exceeding 25 rupees in value, above which sum an appeal lay to the Judge.[6]

In 1805 a Provincial Court of Appeal and Circuit was established at Baróch, consisting of three Judges and a Register, and the Court of Session at Surat was abolished.[7] Judges and Magistrates were also appointed for the Zillahs of Baróch and Kaira in the same year.[8]

The great number of civil causes pending in the Adawluts at Surat and Baróch rendered it expedient, in 1807, to appoint an Assistant Judge at the former place, and to allow of reference to the Registers, both at Surat and Baróch, of suits not exceeding 500 rupees in value. The Judges of the same Adawluts were also authorised to appoint Sudder Ameens, with a jurisdiction to try referred causes of the value of 100 rupees.[9] An Assistant Register was appointed in the same year at Surat, with a jurisdiction extending to suits of the value of 200 rupees, as well as Inferior Ameens, to whom petty suits under 50 rupees were to be committed.[10]

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[1] Reg. V. 1799, ss. 7, 8; Reg. III. 1800, ss. 7, 8.
[2] Reg. IV. 1800, s. 6. [3] Reg. VII. 1802, ss. 2. 20.
[4] Reg. III. 1799, s. 19; Reg. I. 1800, s. 19; Reg. VII. 1800, s. 8; Reg. II. 1803, s. 3.
[5] Reg. V. 1799, s. 53; Reg. III. 1800, s. 53; Reg. III. 1802, s. 9.
[6] Reg. I. 1802, s. 6, and Reg. IX. 1802, s. 2.
[7] Reg II. 1805, s. 3. [8] Reg. II. 1805, ss. 2. 5.
[9] Reg. II. 1808, ss. 4, 5. [10] Reg. II. 1808, s. 4.

The Provincial Court at Baróch was empowered in 1808 to hear appeals from the decisions of the Zillah Courts of Surat, Baróch, and Kaira, in suits of the value of 400 rupees, that being the appealable amount from decisions of the Tannah Adawlut to the Sudder Adawlut. Parties dissatisfied with the decisions of the Court of Appeal at Baróch were allowed to appeal again to the Sudder Adawlut, in suits of not less than 800 rupees in value.[1] It was also provided in the same year that appeals from the decisions of the Registers should lie in the first instance to the Zillah Judges, and thence to the Baróch Court of Appeal, in the event of the Judges' decree reversing the decision of the Register to the ordinary appealable amount from the Zillah Courts.[2]

In 1810 the Court of Session at Salsette was abolished, and the jurisdiction of the Provincial Court of Circuit and Appeal extended; at the same time this latter Court was removed from Baróch to Surat, and the office of Assistant Judge at the latter place abolished.[3]

A special Court for the trial of state offences, consisting of three Judges and two Muhammadan law officers, was constituted in 1812, to be under the controul of the Governor in Council.[4] An Assistant Register and Inferior Ameens were also appointed at Baróch and Kaira, and an Assistant Judge at the latter place, all with the same powers as those exercised by the like officers at Surat.[5] Subsequently in 1812 the powers of the Provincial Court of Appeal were more fully defined, and it was declared to extend in its jurisdiction over the Zillahs of Salsette, Surat, Baróch, and Kaira.[6] In the same year the powers and duties of the Sudder Adawlut, particularly as regarded its jurisdiction as a Court of Appeal from the decisions of the Provincial Court were fully defined.[7] This, and a previous Regulation passed in this year[8], enacted rules for appeals from the Sudder Adawlut to England, which will be hereafter noticed. In 1812 the Provincial Court was

[1] Reg. II. 1808, s. 6.
[2] Reg. II. 1808, s. 7.
[3] Reg. III. 1812.
[4] Reg. I. 1812.
[5] Reg. V. 1812.
[6] Reg. VI. 1812.
[7] Reg. VII. 1812.
[8] Reg. IV. 1812.

authorised to admit a summary appeal, whatever might be the amount at issue, in all cases in which the Zillah Court might have refused to admit, or have dismissed without investigation, on the ground of delay, informality, or other default, appeals from the decisions of the Registers' Assistants, Registers, or Native Commissioners.[1] The Sudder Adawlut was also in this year empowered to receive any appeal, whatever might be the amount in dispute, from the decrees of the Provincial Court, in appealed cases, refused or dismissed without investigation on the like grounds, by such Courts.[2] At the same period the rules for the Provincial Court of Circuit, and for the Superior Criminal Tribunal of the Governor in Council, were made more comprehensive and definite.[3]

In the year 1813 the Statute 53d Geo. III. c. 155, s. 105, made British subjects resident in the provinces punishable for assaults and trespass against the Natives of India by the District and Zillah Magistrates; but the convictions of such Magistrates were made removeable to the Recorder's Court by writ of Certiorari. The same Statute, by section 107, rendered British subjects, residing, trading, or holding immoveable property in the provinces, amenable to the Company's Civil Courts in suits brought against them by Natives. A right of appeal, however, to the Recorder's Court was reserved to them in cases which otherwise would be appealable to the Sudder Adawlut.

In 1815 Assistant Zillah and City Judges were appointed, and the jurisdiction of the Assistant Registers and Native Commissioners somewhat extended.[4]

An alteration deserving of notice took place in the year 1818, when the powers of the Magistrates were modified and defined: the office of Zillah Magistrate was transferred from the Zillah Judge to the Collector, the Assistant Collectors to be Assistant Magistrates[5], and the Judges of the Zillah Courts

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[1] Reg. VI. 1812, s. 12.
[2] Reg. VII. 1812, s. 10.
[3] Reg. VIII. 1812, and Reg. IX. 1812.
[4] Reg. V. 1815.
[5] Reg. III. 1818. ss. 3, 4.

were constituted Criminal Judges of their Zillahs[1], with charge of the Police at the chief stations. The Magistrates were to apprehend all persons charged with crimes or offences[2], and were empowered to punish offenders convicted by them of petty offences of abuse, assault, or affrays, by imprisonment not exceeding fifteen days, or fine not exceeding 200 rupees, and to inflict corporal punishment not exceeding eighteen ratans, or imprisonment extending to one month, in cases of petty thefts.[3] The Criminal Judges were to take cognizance of charges brought before them by the Magistrates or their Police-officers, and to pass sentence of fine not exceeding 200 rupees, and, in cases of theft, of imprisonment not exceeding six months, and corporal punishment of thirty ratans; in cases deserving of more severe punishment they were to commit the prisoners for trial to the Court of Circuit.[4] The Superior tribunal had a controul over both Criminal Judges and the Court of Circuit[5], and the sentences of the Superior tribunal were to be final in all cases of fine, imprisonment, or corporal punishment.[6] Assistants to the Criminal Judges were also appointed.[7]

A general system of Police was established throughout the territories subject to the Bombay Government in the same year[8], by which the Police, which had theretofore been confided to Foujdars and Thanahdárs, was transferred to the Heads of Villages, aided by the Village Registers and Watchers; Kamavisdárs or native district officers, with an establishment of Police-officers; Zamíndárs; Ameens of Police; Kútwáls and their Peons; Magistrates and their Assistants; and Criminal Judges at the Sudder stations of the Zillah Courts, with their Assistants. This Police system was framed on the same plan as that enacted by Regulation XI. of 1816 of the Madras code already noticed.

In 1819 Hindús were granted the benefit of their own law

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[1] Reg. III. 1818, s. 42.
[2] Reg. III. 1818, s. 7.
[3] Reg III. 1818, ss. 30, 31.
[4] Reg. III. 1818, s. 47.
[5] Reg. III. 1818, s. 65.
[6] Reg. III. 1818, s. 17.
[7] Reg. III. 1818, s. 43.
[8] Reg. IV. 1818.

in trials for state offences, the Special Court having previously only administered Muhammadan law.[1]

In the year 1820 several important changes took place: the Provincial Court of Appeal was abolished[2], and the Suddor Adawlut was transferred from Bombay to Surat, and was made to consist of four Judges[3], a Register, and an Assistant Register, and law officers, and confirmed in all its former powers. It was directed that a special appeal should lie to the Sudder Adawlut from the decisions of the Zillah Courts, in all cases where such decisions were inconsistent with the laws or usages, or with judicial precedent, or where it might appear that there was a want of jurisdiction, or that there was a failure of justice.[4] The Sudder Adawlut was also empowered to receive summary appeals from the Zillah Courts in all cases in which the latter might have refused to admit an original suit or regular appeal, or dismissed it without investigation, on the ground of delay, informality, or other default.[5] The office of Assistant Zillah Judge was also done away with[6], and appeals were ordered to lie to the Zillah Courts from all decisions of their Registers.[7] The Registers were empowered to try and determine appeals from Sudder Ameens or Native Commissioners, and to try and decide any suits above 500 rupees and not exceeding 1000 in value, referred to them by the Zillah Judges: an appeal lay in such referred suits to the Sudder Adawlut. The Registers were also authorised to try appeals, referred as above from other Registers, in suits under 500 rupees.[8] In certain cases additional Registers were appointed to the Zillah Courts, who were also to be additional senior Assistants to the Criminal Judges.[9] In the same year the powers and functions of the Provincial Court of Circuit and the Superior tribunal were united in a Court to be called the Sudder Foujdary Adawlut, to be established at Surat, to consist of four Judges[10] assisted by law

[1] Reg. X. 1819.
[2] Reg. V. 1820, s. 2.
[3] Reg. V. 1820, s. 4.
[4] Reg. V. 1820, s. 29.
[5] Reg. V. 1820, s. 30.
[6] Reg. VI. 1820, s. 2.
[7] Reg. VI. 1820, s. 3.
[8] Reg. VI. 1820, s. 6.
[9] Reg. VI. 1820, s. 8.
[10] Reg. VII. 1820, ss. 2—5.

and ministerial officers, and to be empowered to take cognizance of all matters relating to Criminal Justice and the Police, and to call for the proceedings of the Criminal Judges or Zillah Magistrates.[1] The Judges were to go Circuit, and to hold two general gaol deliveries annually, one Judge to go the Circuit of all the Zillahs[2]; and their sentences were to be final, excepting in sentences of death or imprisonment for life, when they were to be referred to the Sudder Foujdary Adawlut.[3] The Criminal Judges were authorised to pass sentence of imprisonment, with or without labour, for a term not exceeding seven years; but all sentences of imprisonment for more than two years were to be referred to the Sudder Foujdary Adawlut.[4]

(2) System of 1827.

All the Bombay Regulations passed previously to the year 1827, with the exception of a few relating to customs and duties, were rescinded in that year, and the system of Judicature was entirely re-modelled in the code by which they were superseded: the groundwork, however, still remained the same, the new code being based upon the Bengal Regulations of 1793. The plan for the administration of justice which existed before 1827 had been formed under many difficulties, arising from local circumstances, and was found to be both complicated and insufficient: the new code, therefore, which was introduced by the Honourable Mountstuart Elphinstone, and was almost the closing act of his talented and efficient Government, must be regarded as forming an important era in the history of the Bombay Presidency.

The system of 1827, which, with some few alterations, exists at the present time, was substantially as follows:—

Native Commissioners were appointed in each Zillah for trying and deciding civil suits, between 500 and 5000 rupees, where the parties were neither Europeans nor Americans.[5]

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[1] Reg. VII. 1820, s. 10.
[2] Reg. VII. 1820, s. 11.
[3] Reg. VII. 1820, s. 17.
[4] Reg. VII. 1820, s. 48
[5] Reg. II. 1827, s. 37.

In all cases an appeal lay to the Judge, whose decision was final[1]; but he might refer the appeal to a Senior Assistant Judge, in which case the latter's decision was final if affirming the decision of the Court below; but if otherwise, an appeal lay to the Zillah Judge.[2] Zillah Courts were established, each to be presided over by one Judge.[3] An appeal lay from all their decisions in original suits to the Sudder Dewanny Adawlut[4]; but if the suit in the Zillah Court were against a British-born subject, residing, trading, or occupying immoveable property in the Zillah, he might appeal to the Supreme Court, instead of to the Sudder Dewanny Adawlut, as provided by the 53d Geo. III. c. 155, s. 107.[5] Special appeals were allowed from the decrees of the Zillah Courts to the Sudder Dewanny Adawlut when such decrees were contrary to the Regulations, or inconsistent with usage, or the Hindú or Muhammadan laws, or when they involved points of general interest not previously decided in the Sudder Dewanny Adawlut. The Sudder Dewanny Adawlut was authorised to admit summary appeals from the decrees of the Zillah Judges, or any inferior Court, which might have been rejected by the Zillah Judge on account of having been presented after the limited period, or on any other ground.[6] Assistant Zillah Judges were appointed; and where more than one, they were specified as Senior and Junior. The Senior Assistant Judges were to try suits original or in appeal, referred to them by the Zillah Judge, not exceeding 5000 rupees in amount; and the Junior Assistant Judges, suits within the limit of 500 rupees.[7] Appeals from the decisions of Junior and Senior Assistant Judges lay in all cases to the Zillah Judge, whose decision was final, with the exception that in case of appeals from original decisions of Senior Assistant Judges, if the Zillah Judge differed in opinion, a further appeal within certain restrictions, lay to the Sudder Dewanny

[1] Reg. IV. 1827, s. 72.
[2] Reg. IV. 1827, s. 72.
[3] Reg. II. 1827, s. 16.
[4] Reg. IV. 1827, s. 72.
[5] Reg. IV. 1827, s. 72.
[6] Reg IV. 1827, s. 97.
[7] Reg. II. 1827, s. 28.

Adawlut.[1] Where the Senior Assistant Judge affirmed a decision in appeal from a lower Court, referred to him by the Judge, his decision was final; otherwise an appeal lay to the Judge, whose decision was final[2]; the Zillah Judge was also competent to admit special appeals from decrees passed in appeal by Senior Assistant Judges.[3] The Chief Civil Court of Appeal, styled the Sudder Dewanny Adawlut, and consisting of three or more Judges, a Registrar, Assistant Registrars, and law officers[4], was to hear appeals from the Zillah Courts; and was also competent to call for all proceedings of the lower Civil Courts.[5] From the Sudder Dewanny Adawlut an appeal lay to the King in Council[6], as will be hereafter noticed. It was also enacted, that in any Court in which an European presided, he might derive assistance from respectable natives, who should be employed as a Panchâyit, or sit as assessors, or more nearly as a jury, the decision being, however, vested in the presiding authority.[7]

The system of criminal judicature introduced at Bombay in the year 1827 comprises the establishment for the administration of Police; and the two branches are so interwoven one with another, that it becomes difficult to draw a line of separation between them. The apprehension of offenders, and the punishment of trivial offences, was given exclusively to the Magistrates and Officers of Police.[8] The Zillah Judges were made Criminal Judges in their respective Zillahs, for the trial of persons committed for that purpose by the Police Magistrates, charged with crimes or offences of a less heinous nature than those reserved for the Court of Circuit.[9] The Assistant Zillah Judges were made Assistant Criminal Judges.[10] The Criminal Judges were empowered to inflict solitary imprisonment for six months, or to imprison with hard labour for seven years, and to inflict fifty stripes, or disgrace, fine, or personal restraint: sentences of imprisonment for more than

[1] Reg. IV. 1827, s. 72.
[2] Reg. IV. 1827, s. 72.
[3] Reg. IV. 1827, s. 99.
[4] Reg. II. 1827, ss. 1, 2. 11. 13.
[5] Reg. II. 1827, s. 5.
[6] Reg. IV. 1827, s. 100.
[7] Reg. IV. 1827, s. 24.
[8] Reg. IX. 1827.
[9] Reg. XIII. 1827, s. 7.
[10] Reg. XIII. 1827, s. 8.

two years were, however, to be referred to the Sudder Foujdary Adawlut. Senior Assistant Criminal Judges were limited in their powers to sentencing to imprisonment with labour for two years, and the infliction of thirty stripes, fines, disgrace, and personal restraint: Senior Assistants were sometimes to be vested with the same powers as Criminal Judges. Junior Assistant Criminal Judges were only empowered to imprison, without labour, for two months, and to inflict fines, and personal restraint.[1] A Court of Circuit was established, to be held by one of the Judges of the Sudder Foujdary Adawlut in rotation, at the Sudder station of each Zillah, for the trial of heinous offences not being committed against the State: this Court was to hold half-yearly sessions[2], and was to pass final sentences, excepting those of death, transportation, or perpetual imprisonment, in which cases the sentences required the confirmation of the Sudder Foujdary Adawlut.[3] A Special Court was also established for the trial of political offences, to consist of three Judges, to be selected from those of the Sudder Foujdary Adawlut and the Zillah Courts: their proceedings were to be forwarded to the Governor in Council.[4] The Sudder Foujdary Adawlut, or Court of Supreme Criminal Jurisdiction, consisted of the same Judges as the Sudder Dewanny Adawlut[5], and was empowered to superintend the administration of Criminal Justice and Police, to revise trials[6], and to pass final sentences of death, transportation, and perpetual imprisonment. The Governor in Council had a power reserved of granting pardons or mitigation of punishment.[7] All these Criminal Courts were authorised to call in the assistance of Natives, as in the Civil Courts[8]; and the law which they administered was set forth in a Regulation defining crimes and offences, and specifying the punishments to be inflicted for the same.[9]

The duties of the Police were, in the year 1827, directed to

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[1] Reg. XIII. 1827, s. 13.
[2] Reg. XIII. 1827, s. 5.
[3] Reg. XIII. 1827, s. 21.
[4] Reg. XIII. 1827, s. 4.
[5] Reg. XIII. 1827, s. 2.
[6] Reg. XIII. 1827, s. 27.
[7] Reg. XIII. 1827, s. 31.
[8] Reg XIII. 1827, s. 38.
[9] Reg. XIV. 1827.

be conducted by the Judge and Collector of each Zillah, under the respective designations of Criminal Judge and Zillah Magistrate; the District Police-officers; and the Heads of Villages.[1] The Heads of Villages with their Police establishments, were to be under the controul of the District Police-officers and Magistrates[2]; and they were empowered to apprehend offenders, and send them to the District Police-officers[3], to hold inquests[4], and, in cases of abuse or assault, to inflict imprisonment not exceeding twenty-four hours.[5] The District Police-officers were under the immediate controul of the Zillah Magistrates: they were enjoined to apprehend offenders and forward them to the Magistrate[6], to investigate serious offences, and to hold inquests[7]; and they also had the power of punishing trivial cases of theft, abuse, assault, or resistance to public officers, by fine not exceeding five rupees, or confinement for eight days.[8] The Magistrates and their Assistants were empowered to apprehend all persons charged with crimes or offences. If such persons were British subjects residing in the Provinces, they were to be sent for trial to the Bombay Court of Judicature; and if offenders against the State, they were to be kept in custody, and the case reported to the Governor in Council[9]: all other persons they were authorised to try, and to punish by fine, imprisonment without labour for two months, to be enforced by the Criminal Judge, or flogging not exceeding thirty stripes, or to forward them to the Criminal Judge.[10] The Police Jurisdiction of the Criminal Judge extended over the town in which the Adawlut was situated, and a cirtain space around; and to him was given the exclusive superintendence of the Police throughout the Zillah.[11]

This plan for the administration of justice and the Police was the result of a revision of the former Regulations,

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[1] Reg. XII. 1827, s. 1.
[2] Reg. XII. 1827, s. 48.
[3] Reg. XII. 1827, s. 50.
[4] Reg. XII. 1827, s. 52.
[5] Reg. XII. 1827, s. 49.
[6] Reg. XII. 1827, s. 41.
[7] Reg. XII. 1827, s. 44.
[8] Reg. XII. 1827, s. 41.
[9] Reg. XII. 1827, s. 10.
[10] Reg. XII. 1827, ss. 12, 13.
[11] Reg. XII. 1827, s. 2.

and may be considered as the basis on which the present system has been erected. Some alterations have since taken place, which it will be necessary to enumerate.

(3) Alterations since 1827.

(a) *Civil Judicature.*

The first change of any importance in the system above described was the establishment in 1828 of a Court of Appeal for the Guzerat Zillahs[1], subordinate to the Sudder Dewanny Adawlut; and the removal of the latter Court from Surat to the Presidency.[2] This Court of Appeal consisted of three Judges, and took the place of the Sudder Dewanny Adawlut in respect of Appeals from the Zillah Courts at Guzerat.[3] A regular appeal lay from its decisions to the Sudder Dewanny Adawlut, when the decisions of the Zillah Courts were altered or reversed; and where such decisions were confirmed, when the amount at issue, or damages claimed, exceeded 5000 rupees.[4] Special appeals were to be open from the decrees of the Provincial Court to the Sudder Dewanny Adawlut, under the rules previously in force respecting special appeals.[5]

This Court of Appeal was abolished in 1830, and the jurisdiction of the Native Commissioners was extended to the cognizance of all original suits, and suits referred to them by the Judge or Assistant Judge at a detached station, excepting where public officers or Europeans or Americans were parties, in which case they were to be tried in the first instance by the Judge, or referred by him to his Assistants.[6] Senior Assistant Judges at detached stations were empowered to hear appeals from their decisions in suits not exceeding 5000 rupees in value[7]; and an appeal was directed to lie from such Judge, and from the Judge at a detached station, or the Assistant

[1] Reg. VII. 1828, s. 1.
[2] Reg. VII. 1828, Preamble.
[3] Reg. VII. 1828, s. 5.
[4] Reg. VII. 1828, s. 19.
[5] Reg. VII. 1828, s. 20.
[6] Reg. I. 1830, ss. 1, 5.
[7] Reg. I. 1830, s. 4.

Judge at a Sudder station, confirming their decisions in suits above 3000 rupees, or reversing in suits above 1000, to the Sudder Dewanny Adawlut[1]; a special appeal was also declared to be open to the Sudder Dewanny Adawlut in all cases under the rules previously in force with regard to special appeals.[2]

In the following year some important alterations were made with regard to appeals. The decisions of Assistant Judges at Sudder stations in appeal from those of the Native Commissioners were declared appealable to the Zillah Judge if confirming such decisions in suits up to the value of 2000 rupees, and altering or reversing them in suits not exceeding 1000 rupees; but above those sums the appeal lay to the Sudder Dewanny Adawlut. The decision of an Assistant Judge at a detached station, if confirming that of the Native Commissioner, was final in suits not exceeding 1000 rupees; but if reversing such decision, it was final only to the amount of 500 rupees. A special appeal to the Zillah Judge was reserved in suits below those amounts: suits above such Assistant Judge's final jurisdiction, but not exceeding 5000 rupees, were re-appealable to the Zillah Judge: if above 5000 rupees, to the Sudder Dewanny Adawlut. The Zillah Judge's decision on cases appealed to him was final, except by means of special appeal to the Sudder Dewanny Adawlut.[3] Suits tried in the first instance by Assistant Judges, as coming within the exceptions already mentioned respecting the jurisdiction of the Native Commissioners, were made appealable to the Zillah Judge, whose decision was final if confirmatory and in suits not exceeding 5000 rupees; but if otherwise, an appeal lay instead to the Sudder Dewanny Adawlut.[4] In the same year the office of Native Commissioner was ordered to comprise three gradations, and the officers holding them were directed to be styled respectively Native Judges, Principal Native Commissioners, and Junior Native Commissioners.[5] The Native Judges were to have cognizance,

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[1] Reg. II. 1830, s. 1.
[2] Reg. II. 1830, s. 2.
[3] Reg. VII. 1831, s. 3.
[4] Reg. VII. 1831, s. 4.
[5] Reg. XVIII. 1831, s. 1.

in addition to original suits of any amount, of appeals referred to them from original decisions of the two classes of Native Commissioners, in suits not exceeding 100 rupees; and the jurisdiction of the Principal and Junior Native Commissioners was limited to the cognizance by them of suits original, or referred to them, to the amounts respectively of 10,000 and 5000 rupees.[1]

The right of appeal from the Mofussil Courts to the Supreme Courts, vested in British subjects by the 53d Geo. III. c. 155, s. 107, was abolished in 1836 ; and it was also enacted that no person, by reason of birth or descent, should be exempt from the jurisdiction of the Company's Courts[2], or be incapable of being a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, as the Native Judges and Principal and Junior Native Commissioners were then ordered to be designated.[3]

All suits in regard to tenures, and the interest connected therewith, and all suits respecting the right to possession of lands, or of the Watans of hereditary district or village officers, were, in the year 1838, directed to be brought in the Courts of Adawlut, and not in the Revenue Courts; and the Sudder Dewanny Adawlut was empowered to refer to the proper Court proceedings which might have been taken in any Court not having jurisdiction.[4]

It was enacted in 1843 that special appeals should lie to the Sudder Dewanny Adawlut from all decisions passed in regular appeals by the subordinate Civil Courts, when inconsistent with law or usage, or the practice of such Courts, or involving doubtful questions of law, usage, or practice.[5]

In 1844 it was enacted that all suits within the competency of a Principal Sudder Ameen or Sudder Ameen to decide should ordinarily be instituted in the Courts of those officers; but that they might be withdrawn at the discretion of the Zillah Judges, who might try them themselves, or refer them to any competent subordinate Court. The Zillah Judges

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[1] Reg. XVIII. 1831, s. 3.
[2] Act XI. 1836, ss. 4, 5.
[3] Act XXIV. 1836, ss. 2, 3.
[4] Act XVI. 1838.
[5] Act III. 1843, s. 1.

were also authorised to admit summary appeals from the orders of Principal Sudder Ameens and Sudder Ameens rejecting suits cognizable by them.[1]

Joint Zillah Judges were appointed in 1845, to have the same powers and concurrent jurisdiction with the Zillah Judges.[2]

(*b*) *Criminal Judicature.*

In 1828 a Provincial Court of Circuit was established for the Zillahs in the Province of Guzerat, to have the same powers and duties as, but to be subject to, the Sudder Foujdary Adawlut[3], which was removed to the Presidency. Sentences of death, transportation, or imprisonment for life, passed by the Court of Circuit, were to be referred to the Sudder Foujdary Adawlut.[4]

This Provincial Court of Circuit was abolished in 1830, and the powers of Sessions Judges and Court of Circuit were given to the Criminal Judges[5], and the Assistant Criminal Judges were appointed Assistant Sessions Judges.[6] Visiting Commissioners of Circuit were at the same time appointed, for holding State trials, and trials of a peculiar and aggravated nature[7], with all the powers of the Court of Circuit and of the Special Court.[8] In the same year the Criminal Judges were directed to be styled Sessions Judges.[9]

An additional Judicial Commissioner of Circuit was appointed in 1833.[10]

Appeals from the Special Court for the trial of political offences, which formerly lay to the Governor in Council, were, in 1837, transferred to the Foujdary Adawlut, whose sentence was, however, required to be confirmed by the Government.[11]

In 1839 all sentences passed by Assistant Sessions Judges, whereby convicts became liable to imprisonment for more than

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[1] Act IX. 1844, ss. 1, 2. 4.
[2] Act XXIX. 1845.
[3] Reg. VIII. 1828, s. 8
[4] Reg. VIII. 1828, s. 15.
[5] Reg. III. 1830, ss. 1, 2, 3.
[6] Reg. III. 1830, s. 6.
[7] Reg. III. 1830, ss. 9, 10.
[8] Reg. III. 1830, s. 11.
[9] Reg. IV. 1830, s. 2.
[10] Reg. VIII. 1833.
[11] Act XXXVII. 1837.

two years, were directed to be confirmed by the Sessions Judges, and a reference to the Sudder Foujdary Adawlut was not to be necessary.[1]

In the year 1841 it was enacted that crimes against the State should be cognizable by the ordinary tribunals; but that the sentences and proceedings of the Courts in such trials should be reported to the Sudder Foujdary Adawlut, who again were to refer their sentences to the Government for confirmation.[2]

In 1845 it was enacted that any person convicted of adultery by any of the East-India Company's Courts in the Bombay Presidency should be sentenced to fine or imprisonment, or both, at the discretion of such Courts: no woman to be prosecuted for such offence but by her husband; and no person to be admitted to prosecute any man but the husband of the woman with whom such man was alleged to have committed adultery.[3]

Joint Sessions Judges were appointed in 1845, to have the same powers and concurrent jurisdiction with the Zillah Sessions Judges.[4]

(c) *Police Establishment.*

In the year 1828 the Assistant Criminal Judges stationed elsewhere than at Sudder stations were invested with Police powers, and the Zillah Magistrates were directed to refer cases to them, instead of to the Criminal Judge.[5]

Several important changes took place in 1830. The Criminal Judges were divested of their Police powers, which were transferred to the Magistrates, with an exception, however, of the Judge of the City and Sudder station of Surat[6]; the penal jurisdiction of the Magistrates and their Assistants was extended to fine and imprisonment with hard labour for one year; all sentences of Assistant Magistrates of imprisonment above three months were, however, to be confirmed by the Magis-

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[1] Act XIX. 1839.
[2] Act V. 1841.
[3] Act. II. 1845.
[4] Act XXIX. 1845.
[5] Reg. XII. 1828.
[6] Reg. IV. 1830, s. 1.

trate, who was also to have a power of revision of all their sentences.[1] District Police-officers were empowered to punish petty offenders by fine not exceeding fifteen rupees, and confinement not exceeding twenty days.[2] Subsequently Sub-Collectors were given the same Magisterial powers and penal jurisdiction as Collectors[3]; and they were afterwards, in 1831, directed to be entitled in such capacity Joint Magistrates.[4] In the same year Zillah Magistrates were authorised to punish by solitary imprisonment for one month[5]; and the Visiting Judicial Commissioners were empowered to annul any sentence passed by a Zillah Magistrate.[6]

Joint Police-officers were appointed in the year 1833 in certain large towns, who were invested with a similar authority and jurisdiction to that of the District Police-officers, and were made subordinate to the Native Collectors.[7]

In 1843 sentences passed by Magistrates on British subjects residing in the provinces for assaults and trespasses against Natives of India were made appealable, in the same manner as sentences passed by them in their ordinary jurisdiction; and when so appealed, they were no longer to be removable by Certiorari to the Queen's Court.[8]

In the year 1846 the Police jurisdiction of the City and Sudder station of Surat was vested in the Magistrate of the Zillah, in the place of being under the controul of the Judge and his Assistants.[9]

Having thus traced the progress of the Judicial systems at the three several Presidencies, from their origin to the present time, I shall, in the following division of this Section, describe shortly the past and present jurisdiction of the Sudder and Mofussil Courts, and enumerate the various laws therein administered, concluding the account of these Courts by a summary statement of their actual constitution.

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[1] Reg. IV. 1830, s. 3.
[2] Reg. IV. 1830, s. 5.
[3] Reg. V. 1830, s. 2.
[4] Reg. VIII. 1831, s. 1.
[5] Reg. VIII. 1831, s. 2.
[6] Reg. VIII. 1831, s. 5.
[7] Reg. III. 1833, s. 1.
[8] Act IV. 1843.
[9] Act V. 1846.

4. Jurisdiction of the Sudder and Mofussil Courts, and the Laws administered therein.

(1) Civil Jurisdiction.

The civil jurisdiction of the Courts established by the Honourable East-India Company originally extended over Natives only, British subjects never then residing in the provinces, except in their official capacities.

In the year 1787, however, it was declared, that whenever British subjects and others, "not being amenable to the jurisdiction of the Dewanny Courts," should institute a suit in such Courts against any person duly amenable to them, they should enter into a bond declaring themselves to be subject to their jurisdiction in respect of such suits, and binding themselves to abide by their award or decree.[1]

By Regulations subsequently passed, it was enacted that the jurisdiction of the Company's Courts should extend over all Natives and other persons not British subjects[2], and also over such British subjects (excepting King's officers, and the covenanted civil servants of the Company and their military officers) as were suffered to reside at a distance from the seat of Government, on entering into a bond rendering themselves amenable to the Company's Courts in civil suits instituted against them by Natives or others, not British subjects, in which the amount claimed did not exceed 500 rupees.[3]

In the year 1813 it was enacted by Act of Parliament[4] that British subjects residing, or trading, or holding immoveable property at a distance of more than ten miles from the

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[1] Beng. Jud. Reg. VIII. 1787, s. 38.

[2] Beng. Reg. III. 1793, s. 7. Mad. Reg. II. 1802, s. 4. Bomb. Reg. III. 1799, s. 6; Bomb. Reg. I. 1800, s. 6; Bomb. Reg. II. 1827, s. 21.

[3] Beng. Reg. III. 1793, s. 9; Beng. Reg. XXVIII. 1793, s. 2. Mad. Reg. II. 1802, s. 6. Bomb. Reg. III. 1799, s. 8; Bomb. Reg. I. 1800, s. 8.

[4] 53d Geo. III. c. 155, s. 107.

Presidencies, should be subject to the jurisdiction of the Courts of the East-India Company in civil suits and matters of revenue, in like manner as the Natives of India, except that, in cases where an appeal would lie to the Company's Court exercising the highest appellate jurisdiction, such British subjects were to be allowed to appeal instead to the King's Courts at the Presidencies. The same Statute also gave a jurisdiction to Magistrates in cases of small debts not exceeding 50 rupees due from British subjects to Natives, and contracted without the jurisdiction of the several Courts of Requests established at Calcutta, Madras, and Bombay respectively.[1]

The Native Judicial Officers at all the Presidencies, previously to the year 1836, had no jurisdiction over Europeans or Americans in any civil suits, such persons being amenable only to the Courts presided over by European Judges.[2]

In the year 1836 Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, who might be British-born subjects or their descendants, were declared to be subject to the jurisdiction of the Company's Courts for all acts done by them as such, and to be liable to the same proceeding as though they were not of British birth or descent.[3]

In the same year, and afterwards in 1839 and 1843, Acts were passed which caused great dissatisfaction at the time, but the justice and good policy of which will hardly be questioned by any but those actuated by interested motives. The right of appeal to the Supreme Courts of Judicature, which had been

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[1] 53d Geo. III. c. 155, s. 106. By the 4th Geo. IV. c. 81, s. 57, and the 3d & 4th Vict. c. 37, s. 54, officers and soldiers, being British subjects, were excepted from the operation of this rule.

[2] Beng. Reg. XXIII. 1814, ss. 13. 68. Beng. Reg. XXIV. 1814, s. 7; Beng. Reg. II. 1821, ss. 3. 5; Beng. Reg. V. 1831, ss. 15. 18. By Beng. Reg. IV. 1827, s. 2, Sudder Ameens had been given a jurisdiction over European subjects, European foreigners, and Americans, in suits in which they might be parties, when such suits were referred to them by the Zillah or City Judges; but this section was rescinded by Reg. V. 1831, s. 15. Mad. Reg. VII. 1827, s. 7. Bomb. Reg. II. 1827, s. 43; Bomb. Reg. I. 1830, s. 5.

[3] Act VIII. 1836, s. 2; Act XXIV. 1836, s. 4.

previously reserved to British subjects under the 53d Geo. III. c. 155, s. 107, was abolished[1], and it was enacted, in comprehensive terms, that thenceforth no person whatever should, by reason of place of birth, or by reason of descent, be, in any civil proceeding whatever, excepted from the jurisdiction of any of the Company's Civil Courts.[2]

(2) Criminal Jurisdiction.

The criminal jurisdiction of the Company's Courts was originally limited to Natives and Europeans not British subjects; and when British subjects committed, or were charged with committing, any acts, at a distance from the King's Courts, which rendered them liable to prosecution in those Courts, the Magistrates were enjoined to apprehend them, and having made inquiries into the circumstances, to despatch them to the Presidency for trial.[3]

The 53d Geo. III. c. 155, s. 105, which was passed in the year 1813, enacted, however, that it should be lawful for any Native of India resident within the British territories without the towns of Calcutta, Madras, and Bombay, in case of any assault, forcible entry, or other injury accompanied with force, not being a felony, alleged to have been done against his person or property by a British subject, to complain to the Magistrate of the Zillah or district where the alleged offender resided, or

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[1] Act XI. 1836, s. 1.

[2] Act XI. 1836, s. 2. Act XXIV. 1836, s. 5. Act III. 1839, ss. 1. 3. Act VI. 1843, s. 7. Act VII. 1843, s. 5. It may be here remarked, that, by a Construction of the Sudder Dewanny Adawlut of Bengal relative to Act XI. of 1836, it was declared that the said Act did not take away any exemption to which any person might be entitled by virtue of his office, and that consequently judicial functionaries who were not liable to civil actions in the Courts specified in the Act on account of alleged injuries committed by them in their official capacities before the passing of the Act, were not thereby rendered liable. See Construction S. D. A. No. 1051.

[3] Beng. Jud. Reg. XXII. 1787, s. 12; Beng. Jud. Reg. XXVI. 1790, s. 12; Beng. Reg. IX. 1793, s. 10. Mad. Reg. VI. 1802, s. 19; Mad. Reg. IV. 1809, ss. 2, 3. Bomb. Reg. V. 1799, s. 18; Bomb. Reg. III. 1800, s. 18; Bomb. Reg. III. 1818, s. 29; Bomb. Reg. XII. 1827, s. 10.

the offence had been committed; and that the Magistrate should have power to take cognizance of such complaint, and to acquit or convict the person accused, and in case of a conviction, to punish the offender by fine not exceeding 500 rupees; but all such convictions were declared to be removable by writ of Certiorari into the King's Courts of Oyer and Terminer, and Gaol delivery.

Native Criminal Judges at Madras have no jurisdiction over Europeans or Americans, such persons being amenable only to those Courts which are presided over by European Judges.[1]

In 1836 British-born subjects or their descendants, who might hold the appointment of Principal Sudder Ameen, Sudder Ameen, or Moonsiff, were made liable for acts committed by them as such to the same proceedings, and amenable to the same tribunals, as though they were not of British birth or descent.[2]

By a late Act of the Government of India, the removal by Certiorari of the convictions of British subjects in the provinces by the Zillah Magistrates under the 53d Geo. III. c. 155 was restricted to cases in which no appeal had been made against the sentences of the Magistrates to the Superior Courts of the East-India Company.[3]

The criminal jurisdiction of the Courts of the East-India Company extends also over native subjects of the British Government in India, charged with crimes committed in places out of the limits of the British territories.[4]

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[1] Mad. Reg. VIII. 1827, ss. 4, 5; Mad. Reg. III. 1833, s. 2; Act XXXIV. 1837, s. 2; Act VII. 1843, s. 43.

[2] Act VIII. 1836. s. 2; Act XXIV. 1836, s. 4.

[3] Act IV. 1843.

[4] Mad. Reg. XI. 1809; Mad. Reg. II. 1829; Mad. Reg. XII. 1832. Bomb. Reg. III. 1809; Bomb. Reg. IV. 1813. A proposed extension of the jurisdiction of the Company's Courts in criminal matters, by which no person is to be exempt from their criminal jurisdiction by reason of place of birth or descent, has been for some time past contemplated. As might have been expected, some opposition has been made to this wise and just amendment by the European inhabitants of India; many being actuated by self interest,

(3) Laws administered in the Sudder and Mofussil Courts.

The law administered in the Courts of the Honourable East-India Company may be classed under five distinct heads.

1. The Regulations enacted by the Governments at the three Presidencies previously to the 3d & 4th Will. IV. c. 85, and the Acts of the Legislative Council of India passed subsequently to that Statute.

2. The Hindú Civil Law in all suits between Hindú parties regarding succession, inheritance, marriage, and cast, and all religious usages and institutions.

3. The Muhammadan Civil Law in similar suits between Muhammadan parties.

4. The Laws and Customs, so far as the same can be ascertained, of other Natives of India not being Hindús or Muhammadans, in similar suits where such other Natives are parties.

5. The Muhammadan Criminal Law as modified by the Regulations. It must be remembered, however, that this law is confined to the Criminal Courts in the Bengal and Madras Presidencies, being superseded at Bombay by a regular code. In Bengal, too, persons of non-Muhammadan faith are, on

and others, it is to be feared, by that arrogant assumption of superiority founded on prejudice and ignorance, which even at the present time prevails amongst a large class of the Anglo-Indians, and induces them to consider it a disgrace to be made amenable to the same laws by which their native fellow-subjects are governed. The opposition, however, seems to have been almost entirely confined to the Presidency towns, if not to Calcutta alone, and is quite inconsiderable when compared with the clamour that was raised against the previous so-called Black Acts, passed for extending the civil jurisdiction of the Company's Courts over all persons, without distinction of birth or descent. Whilst these pages have been passing through the press, the first of these new Black Acts has, I believe, become law, and we may soon expect to see all unfair and invidious distinctions between the European and Native inhabitants of India finally abolished. The day has gone by when Hindús and Muhammadans were looked upon as no farther advanced in developement than the Natives of the Gold Coast; and a very slight study of the criminal law enacted by the Regulations will suffice to expose the absurdity of the outcry, that free-born Britons are about to be delivered over to the "barbarous and sanguinary law" of the Arabian Legislator.

claiming exemption, excepted from trial under the Muhammadan law for offences cognizable under the general Regulations.

These laws will be severally treated of in a subsequent Section.

From the above account of the Courts of Judicature established by the Honourable East-India Company, it will be seen that the gradual changes which have taken place from the earliest period up to the end of 1848 have tended in almost every instance to improve and simplify the constitution of the Courts; to extend our confidence in the Natives by admitting them to a considerable share in the executive department; and to reduce, so far as possible under the circumstances, the plans for the administration of justice adopted at the three Presidencies to one uniform system.

The following summary will exhibit at one view the actual constitution of the several Company's Courts in each Presidency, and will at once present to the reader the slight differences which exist between the three systems.

5. Summary.

(1) Bengal.

(*a*) *Civil Courts.*

1. Moonsiffs are empowered to try and determine suits when the amount in dispute does not exceed 300 rupees.[1] A regular appeal lies from the decisions of the Moonsiffs to the Zillah and City Judges, whose decisions are final.[2]

2. Sudder Ameens are authorised to try and determine suits which do not exceed in value 1000 rupees.[3] An appeal lies from decisions in these Courts to the Zillah and City Judges, whose decisions are final.[4] A summary appeal from their orders rejecting suits also lies to the Zillah and City Courts.[5]

[1] Beng. Reg. V. 1831, s. 5. [2] Beng. Reg. V. 1831, s. 28.
[3] Beng. Reg. V. 1831, s. 15; Act IX. 1844, s. 1.
[4] Beng. Reg. V. 1831, s. 28.
[5] Beng. Reg XXVI. 1814, s. 3; Act IX. 1844, s. 4.

3. Principal Sudder Ameens are empowered to try and determine all suits, whether originally instituted in their Courts, or suits, original and on appeal from the lower Courts, referred to them by the Zillah or City Judges, whatever may be the amount in dispute.[1] An appeal lies from their decisions to the Zillah and City Judges; but where the suit involves a sum exceeding 5000 rupees the appeal lies direct to the Sudder Dewanny Adawlut.[2] A summary appeal from their orders rejecting suits lies to the Zillah and City Courts[3]; a second or special appeal also lies to the Sudder Dewanny Adawlut from their decisions in regular appeals, when inconsistent with law or usage, or the practice of the Courts.[4]

4. The Zillah and City Courts have an original jurisdiction to an unlimited amount, commencing at 5000 rupees.[5] An appeal lies from their original decisions to the Sudder Dewanny Adawlut.[6] A summary appeal from their orders rejecting suits lies to the Sudder Dewanny Adawlut[7]; and a second or special appeal also lies to the same Court from their decisions in regular appeals.[8]

5. The Sudder Dewanny Adawlut[9], or highest Civil Court of Appeal, may call up from the Zillah or City Courts, and try in the first instance, suits exceeding 10,000 rupees in value.[10] The judgments of this Court are final, excepting where the

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[1] Act XXV. 1837, ss. 1. 3; Act IX. 1844, s. 1.

[2] Beng. Reg. V. 1831, s. 28; Act XXV. 1837, s. 4.

[3] Beng. Reg. V. 1831, s. 19; Act IX. 1844, s. 4.

[4] Act III. 1843, s. 1. [5] Beng. Reg. V. 1831. s. 27.

[6] Beng. Reg. V. 1831, s. 28; Beng. Reg. II. 1833, s. 5.

[7] Beng. Reg. XXVI. 1814, s. 3; Beng. Reg. II. 1833, s. 5.

[8] Act III. 1843, s. 1.

[9] There is also a Court of Sudder Dewanny Adawlut for the North-Western Provinces, established at Agra, which has the same powers in those Provinces as are vested in the Sudder Dewanny Adawlut at Calcutta. Beng. Reg.VI. 1831.

[10] Beng. Reg. XXV. 1814, s. 5, reserves the original jurisdiction of the Sudder Dewanny Adawlut in suits instituted in the Provincial Courts amounting to 50,000 rupees, the then appealable amount to the King in Council, and has not been repealed. This amount having been since altered, and the Provincial Courts superseded by the Zillah and City Courts, the original jurisdiction of the Sudder Dewanny Adawlut is as stated in the text.

amount in dispute exceeds 10,000 rupees, in which case an appeal lies to Her Majesty in Council.[1]

(*b*) *Criminal Courts.*

1. The Law officers of the Courts, Sudder Ameens, and Principal Sudder Ameens, have a limited criminal jurisdiction in cases of petty theft and trivial offences referred to them for trial by the Magistrates: their powers of punishment extend to fines of 50 rupees and corporal punishment, and imprisonment with or without labour for one month.[2] An appeal lies from their sentences within one month to the Magistrate or Joint Magistrate, in cases within the limitation prescribed by sections 8 and 9 of Regulation IX. of 1793.[3]

2. Assistant Magistrates have a limited criminal jurisdiction within their districts in cases referred to them by the Magistrates, extending to the infliction of fines not exceeding 200 rupees, and imprisonment not exceeding one year: in offences requiring more severe punishment, the case is to be forwarded to the Magistrate or Joint Magistrate.[4] An appeal lies from the sentences of Assistant Magistrates within one month to the Magistrate or Joint Magistrate, in cases within the limitations prescribed by sections 8 and 9 of Regulation IX. of 1793.[5]

3. The Zillah, City, and Joint Magistrates have a limited criminal jurisdiction, and are empowered to sentence offenders convicted by them to punishment by flogging not exceeding thirty stripes, and to imprisonment for a term not exceeding two years: in cases requiring heavier punishment, they are to forward the prisoner to the Sessions Judge.[6] An appeal lies from their sentences within one month, in all cases beyond the

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[1] See *infra*, the Section on Appeals to England.

[2] Beng. Reg. III. 1821, ss. 3, 4; Beng. Reg. V, 1831, s. 18; Beng. Reg. II. 1832, s. 3.

[3] Act XXXI. 1841, s. 2.

[4] Beng. Reg. III. 1821, s. 2.

[5] Act XXXI. 1841, s. 2.

[6] Beng. Reg. XII. 1818, s. 2; Beng. Reg. VII. 1819, s. 2; Beng. Reg. I. 1829; Beng. Reg. VII. 1831; Act VII. 1835.

limitation prescribed by sections 8 and 9 of Regulation IX. of 1793, to the Sessions Judge.[1]

4. The Sessions Judges are empowered to hold monthly gaol deliveries, and to try and sentence prisoners committed and forwarded to them by the Magistrates and Joint Magistrates.[2] All sentences of perpetual imprisonment and death, and in trials for offences against the State, are, however, to be confirmed by the Nizamut Adawlut.[3] An appeal lies within three months from the sentences or orders of the Sessions Judges to the Nizamut Adawlut.[4]

5. The Nizamut Adawlut[5] is the Chief Criminal Court, and takes cognizance of all matters relating to criminal justice and the Police; it has alone the power of passing final sentences of death or perpetual imprisonment, and in other referrible cases.[6] Its sentences in crimes against the State are, however, to be reported to the Government, whose orders are to be awaited for three months before such sentences are carried into execution.[7] It is also empowered to annul or mitigate sentences of the lower Courts, and to call for the whole record of any criminal trial in any subordinate Court.[8]

(c) *Police Establishment.*

1. The Superintendents of Police have the same powers of punishment as those vested in the Zillah and City Magistrates.[9]

2. The Police Dárógháhs and the inferior Police-officers have no power given to them of adjudging imprisonment or inflicting punishment of any kind: their duties merely extend to

[1] Act XXXI. 1841, s. 2.

[2] Beng. Reg. VII. 1831, s. 4; Act VII. 1835.

[3] Beng. Reg. IX. 1793, s. 58; Beng. Reg. I. 1829; Beng. Reg. VII. 1831, s. 6; Act VII. 1835; Act V. 1841. [4] Act XXXI. 1841, s. 2.

[5] There is also a Court of Nizamut Adawlut for the North-Western Provinces, which has the same powers in those Provinces as the Nizamut Adawlut at Calcutta. Beng. Reg. VI. 1831.

[6] Beng. Reg. IX. 1793, ss. 72. 77. [7] Act V. 1841, s. 5.

[8] Act XXXI. 1841, ss. 3, 4; Act XIX. 1848, ss. 2 4.

[9] Beng. Reg. X. 1808; Beng. Reg. XVII. 1816; Beng. Reg. XX. 1817; Beng. Reg. XII. 1818, s. 6; Act XXIV. 1837, s. 1—4.

the apprehending of persons charged with crimes and offences, and forwarding them to the Magistrates.

2. Madras.

(a) *Civil Courts.*

1. Village Moonsiffs are authorised to try and determine suits preferred to them, where the amount in dispute does not exceed 10 rupees. Their decisions are final.[1]

2. District Moonsiffs are authorised to try and determine suits in which the disputed amount does not exceed 1000 rupees.[2] An appeal lies from their decisions to the Zillah Courts.[3] A summary appeal from their orders rejecting suits also lies to the Zillah Judges, the Subordinate Zillah Judges, or the Principal Sudder Ameens.[4]

3. Sudder Ameens have jurisdiction in suits where the amount in dispute does not exceed 2500 rupees.[5] An appeal lies from their decisions to the Zillah Courts.[6] A summary appeal from their orders rejecting suits also lies to the Zillah Courts.[7]

4. Subordinate Zillah Judges and Principal Sudder Ameens are empowered to try and determine suits where the amount in dispute does not exceed 10,000 rupees[8]; and also any appeals from District Moonsiffs referred to them by the Zillah Courts. An appeal lies from their decisions to the Zillah Courts.[9] A summary appeal from their orders rejecting suits also lies to the Zillah Courts[10]; and a second or special appeal lies to the Sudder Adawlut from their decisions in regular appeals, when inconsistent with law or usage or the practice of the Courts.[11]

5. The Zillah Courts have an unlimited original jurisdiction, commencing at 10,000 rupees.[12] Appeals, regular and sum-

[1] Mad. Reg. IV. 1816, s. 5.
[2] Mad. Reg. III. 1833, s. 5.
[3] Act VII. 1843, s. 8.
[4] Act XVII. 1838, ss. 1, 2.
[5] Mad. Reg. III. 1833, s. 4; Act IX. 1844, s. 1.
[6] Act VII. 1843, s. 8.
[7] Act IX. 1844, s. 4.
[8] Act VII. 1843, s. 4; Act IX. 1844, s. 1.
[9] Act VII. 1843, s. 8.
[10] Act VII. 1843, s. 8; Act IX. 1844, s. 4.
[11] Act III. 1843, s. 1.
[12] Act VII. 1843, s. 3.

mary, lie from the decisions and orders of the Zillah Courts to the Sudder Adawlut [1]; and a second or special appeal lies to the same Court from their decisions in regular appeals.[2]

6. The Sudder Adawlut, which is the Chief Civil Court of Appeal, has a power of calling up from the Zillah Courts, and trying in the first instance, suits in which the disputed amount exceeds 10,000 rupees.[3] The decisions of the Sudder Adawlut are final, except in suits where the disputed amount exceeds 10,000 rupees, when an appeal lies to Her Majesty in Council.[4]

(*b*) *Criminal Courts.*

1. Magistrates, and Joint and Assistant Magistrates, are directed to apprehend persons charged with petty thefts and trivial offences and send them for trial to the subordinate Courts[5]: they have a limited criminal jurisdiction, and are empowered to inflict corporal punishment, fines not exceeding 50 rupees, and to imprison for a term not exceeding fifteen days.[6] Magistrates are also authorised to send offenders for trial, commitment, or confinement, to the Principal Sudder Ameens.[7]

2. Sudder Ameens have a limited criminal jurisdiction when granted to them by the Subordinate Judges and Principal Sudder Ameens, but are not empowered to take cognizance of cases commitable for trial by the Sessions Judge, who is authorised to overrule all sentences passed by Sudder Ameens.[8]

3. The Subordinate Judges, Magistrates exercising their

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[1] Act VII. 1843, s 9. [2] Act III. 1843, s. 1.

[3] Mad. Reg. XV. 1816, s. 2, reserves the original jurisdiction of the Sudder Adawlut in suits exceeding 45,000 rupees, the amount appealable at that time to the Governor-General in Council, instituted in the Provincial Courts, and has never been repealed. But as the new Zillah Courts have been substituted for the Provincial Courts, and the appeal and the appealable amount have been altered, the original jurisdiction of the Sudder Adawlut is as above stated.

[4] See *infra* the Section on Appeals to England.

[5] Mad. Reg. IX. 1816, ss. 9. 24.

[6] Mad. Reg. IX. 1816, ss. 32, 33. 35; Mad. Reg. XIII. 1832, s. 8.

[7] Act XXXIV. 1837, s. 1.

[8] Mad. Reg. III. 1833, s. 2; Act VII. 1843, s. 36.

powers, and Principal Sudder Ameens, are empowered to try cases which are not of so heinous a nature as to require to be sent to the Sessions Judge, and are authorised to inflict corporal punishment, to fine offenders to the extent of 200 rupees, and to imprison for a term not exceeding two years.[1] In other and more serious cases they are enjoined to commit the prisoner for trial by the Sessions Judge.[2] Their sentences are liable to revision by the Sessions Judge and the Foujdary Adawlut.[3]

4 The Sessions Judges are empowered to hold permanent sessions for the trial of persons committed for trial by the Subordinate Judges or Principal Sudder Ameens.[4] Cases in which the Sessions Judges differ from the Fatwa of the law officers are to be referred to the Foujdary Adawlut[5]; as are also all sentences in capital cases[6], and in trials for offences against the State.[7]

5. The Foujdary Adawlut is the Chief Criminal Court, and has cognizance of all matters relating to criminal justice and the Police[8]; it has alone the power of passing final sentences in capital and other referrible cases[9]; but its sentences for offences against the State are to be reported to the Government, whose orders are to be awaited for three months before such sentences are carried into execution.[10] It has also the power of revising, annulling, or mitigating the sentence of the lower Courts, and of calling for the whole record of any criminal trial in any subordinate Court.[11]

(c) *Police Establishment.*

1. The Heads of Villages are enjoined to apprehend and

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[1] Mad. Reg. X. 1816, s. 7; Mad. Reg. VI. 1822, s. 2; Act. VII. 1843, s. 1.
[2] Act VII. 1843, ss. 26, 27.
[3] Mad. Reg. VI. 1822, s. 6; Act VII. 1843. s. 1.
[4] Act VII. 1843. ss. 27. 37.
[5] Mad. Reg. VII. 1802, s. 22; Act VII. 1843, s. 1.
[6] Mad. Reg. VII. 1802, s. 27; Act VII. 1843, s. 26.
[7] Act V. 1841. [8] Mad. Reg. VIII. 1802, s. 8.
[9] Mad. Reg. VII. 1802, s. 15; Mad. Reg. VIII. 1802, s. 11.
[10] Act. V. 1841, s. 5.
[11] Mad. Reg. I. 1825, s. 6; Act VII. 1843, s. 33; Act XIX. 1848, ss. 2—4.

forward to the District Police-officers persons charged with crimes and offences[1]: they also have a limited criminal jurisdiction, and are authorised to punish offenders by confinement not exceeding twelve hours in trivial cases of abuse and assault, and petty theft.[2]

2. The Heads of District Police and Tahsíldárs, besides being directed to apprehend and forward to the Subordinate Judges persons charged with crimes or offences[3], are authorised to try and determine trivial cases of abuse and assault, and petty theft, and to punish the offenders by a fine not exceeding 3 rupees, or imprisonment without labour for three days.[4]

3. Ameens of Police may be appointed, with the same powers as Tahsíldárs or Heads of Villages.[5]

(3) Bombay.

(*a*) *Civil Courts.*

1. Moonsiffs take cognizance of all suits, original or referred to them by the Zillah Judges, or Assistant Judges at detached stations, where the disputed amount does not exceed 5000 rupees.[6] An appeal lies from their decisions, if in the principal divisions of the Zillahs, to the Zillah Judges; or, if in the other divisions, to the Senior Assistant Judge at the detached station.[7] A summary appeal lies to the Zillah Courts from their orders dismissing suits.[8]

2. Sudder Ameens are empowered to try and determine original suits, where the amount in dispute does not exceed 10,000

[1] Mad. Reg. XI. 1816, s. 5.

[2] Mad. Reg. XI. 1816, s. 10; Mad. Reg. IV. 1821, s. 6.

[3] Mad. Reg. XI. 1816, s. 27; Act VII. 1843, s. 1.

[4] Mad. Reg. XI. 1816, s. 33; Mad. Reg. IV. 1821, ss. 4, 5; Mad. Reg. XIII. 1832, s. 5.

[5] Mad. Reg. XI. 1816, s. 40; Mad. Reg. IV. 1821, s. 2.

[6] Bomb. Reg. I. 1830, s. 5; Bomb. Reg. XVIII. 1831, s. 3; Act XXIV. 1836, s. 2.

[7] Bomb. Reg. I. 1830, s. 4; Bomb. Reg. VII. 1831, ss. 2, 3; Act XXIV. 1836, s. 2.

[8] Bomb. Reg. IV. 1827, s. 21.

rupees.[1] An appeal lies from their decisions, if in the principal divisions of the Zillahs, to the Zillah Judges; or, if in other divisions, and not exceeding 5000 rupees in amount, to the Senior Assistant Judge at the detached station.[2] A summary appeal lies to the Zillah Courts from their orders dismissing original suits.[3]

3. Principal Sudder Ameens are empowered to try and determine original suits, whatever may be the amount in dispute; and also appealed suits referred to them by the Zillah Judges from the decisions of Sudder Ameens and Moonsiffs, where the disputed amount does not exceed 100 rupees.[4] An appeal lies from all their decisions to the Zillah Judges.[5] A summary appeal also lies to the Zillah Courts from their orders dismissing original suits[6], and a second or special appeal lies to the Sudder Dewanny Adawlut from their decisions in regular appeals, when inconsistent with law or usage or the practice of the Courts.[7]

4. Assistant Judges at Sudder stations try such original suits as are excluded from the jurisdiction of the Native Judges when referred to them by the Zillah Judges. They also, when specially empowered by the Government, hear appeals from the decisions of the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, referred to them by the Zillah Judges, when the amount in dispute does not exceed 5000 rupees. An appeal lies from their decisions in such appeals to the Zillah Judges, if confirming the judgment of the lower Court, and the amount in dispute should not exceed 2000 rupees; or if reversing or altering

[1] Bomb. Reg. XVIII. 1831, s. 3; Act XXIV. 1836, s. 2; Act IX. 1844, s. 1.

[2] Bomb. Reg. I. 1830, s. 4; Bomb. Reg. VII. 1831, ss. 2, 3; Act XXIV. 1836, s. 2.

[3] Act IX. 1844, s. 4.

[4] Bomb. Reg. XVIII. 1831, s. 3; Act XXIV. 1836, s. 2.

[5] Bomb. Reg. I. 1830, s. 4; Bomb. Reg. VII. 1831, s. 2; Act XXIV. 1836, s. 2.

[6] Act IX. 1844, s. 4.

[7] Act III. 1843, s. 1. There can be no doubt but that, by the wording of Act III. 1843, s. 1, a second or special appeal lies direct to the Sudder Dewanny Adawlut from decisions in appeal of the Principal Sudder Ameens *under the above circumstances;* but as a second appeal lies of right in *all* cases to the Zillah Judges, it is doubtful whether such appeal would be admitted by the Sudder Dewanny Adawlut.

it, and it should not exceed 1000 rupees; above which sums respectively the appeal lies to the Sudder Dewanny Adawlut.[1] Senior Assistant Judges at detached stations try such original suits as are excepted from the jurisdiction of the Native Judges, and hear such appeals from their decisions as do not exceed 5000 rupees in value. If their decision in such appeals confirm the decree of the lower Court, and the amount in dispute should not exceed 1000 rupees, or if it alter or reverse it, and it should not exceed 500 rupees, it is final; above which respective sums the suit may be re-appealed to the Zillah Judges, if the disputed amount do not exceed 5000 rupees; but if above that sum, the appeal lies to the Sudder Dewanny Adawlut.[2] Summary appeals, from their orders rejecting suits, lie to the Sudder Dewanny Adawlut[3]; and second or special appeals lie to the same Court, where their decisions are inconsistent with law or usage or the practice of the Courts.[4]

5. The Courts of the Zillah Judges, and Joint Zillah Judges, have jurisdiction in original suits of unlimited amount. Appeals lie from their original decisions to the Sudder Dewanny Adawlut.[5] Summary appeals from their orders rejecting suits, and second or special appeals, also lie to the Sudder Dewanny Adawlut.[6]

6. The Sudder Dewanny Adawlut, or Chief Court of Appeal in civil suits, has no original jurisdiction. The decisions of this Court are final, except in suits where the amount in dispute exceeds 10,000 rupees, when an appeal lies to Her Majesty in Council.[7]

(*b*) *Criminal Courts.*

1. Assistant Sessions Judges at the Sudder stations of the Zillahs, are empowered to try offenders committed for trial by

[1] Bomb. Reg. VII. 1831, s. 3. [2] Bomb. Reg. VII. 1831, s. 3.
[3] Bomb. Reg. IV. 1827. s. 97.
[4] Bomb. Reg. VII. 1831, s. 4; Act III. 1843, s. 1.
[5] Bomb. Reg. IV. 1827, s. 72; Act XXIX. 1845.
[6] Bomb. Reg. IV. 1827, s. 97; Act III. 1843, s. 1.
[7] See *infra* the Section on Appeals to England.

the Magistrates or their Assistants when the cases are referred to them by the Sessions Judges[1], to inflict fines, disgrace, and personal restraint, corporal punishment not exceeding thirty stripes (for theft only), and ordinary imprisonment for a period not exceeding two years.[2] Their powers, however, may be enlarged by Government to the extent of adjudging imprisonment for seven years, solitary imprisonment for six months, or flogging with fifty stripes[3]; but when a sentence is passed extending the ordinary limit, the confirmation of the Sessions Judge is necessary before execution.[4] Senior Assistant Judges at detached stations have like powers with Assistants at the Sudder stations[5], which may be similarly extended by Government, in which case their sentences also require the confirmation of the Sessions Judges; but they proceed at once to the trial of all cases occurring within their local jurisdiction that are committed to the Sessions by the Magistrates or their Assistants[6], without needing that they be referred specially by the Sessions Judges, reserving only such for trial at the half-yearly Sessions held by the Sessions Judges at the detached stations as require a graver punishment than they themselves are authorised to adjudge.

2. The Sessions Judges are empowered to try all persons, committed for trial by the Magistrates or their Assistants for any offence, and to pass sentences for the same; but sentences of death, transportation, ordinary imprisonment exceeding seven years, or solitary imprisonment exceeding six months, or sentences in cases of perjury committed before themselves, and in trials for offences against the State, are to be referred for confirmation to the Sudder Foujdary Adawlut before execution.[7] They are also empowered, when the Judicial Commissioner is not on circuit within their Zillahs, to call for and amend the

[1] Bomb. Reg. XIII. 1827, ss. 7, 13; Bomb. Reg. III. 1830, s. 6.
[2] Bomb. Reg. XIII. 1827, s 13.
[3] Bomb. Reg. XIII. 1827, s. 13.
[4] Act XIX. 1839.
[5] Bomb. Reg. III. 1830, s. 6.
[6] Bomb. Reg. XII. 1828.
[7] Bomb. Reg. XIII. 1827, ss. 12, 13. 21; Bomb. Reg. III. 1830, s. 3; Bomb. Reg. IV. 1830; Bomb. Reg. VIII. 1831, s. 4.

records of any case or proceeding of the Magistrates or their Assistants, when special reason may appear for so doing.[1] In Zillahs where Joint Judges have been appointed, the Sessions Judges refer cases to them for trial, as they do also suitable cases to their Assistants.[2]

3. The Judicial Commissioners of Circuit are empowered to hold trials of a peculiar or aggravated nature, which from any circumstance Government may wish to be reserved for that purpose; and they are vested with powers of controul, inquiry, and general supervision, over the judicial administration of the Zillahs comprised in their tours.[3] They are also authorised to annul any sentence passed by Magistrates or their Assistants.[4] Their sentences of death, transportation, or perpetual imprisonment, and in trials for offences against the State, are to be referred to the Sudder Foujdary Adawlut.[5]

4. The Sudder Foujdary Adawlut is the Chief Criminal Court, and is vested with the chief superintendence of criminal justice and Police, and with power to revise all trials in the lower Courts. It has alone the power of passing final sentences of death, transportation, or perpetual imprisonment, and in other referrible cases.[6] Its sentences, however, in trials for offences against the State, are to be reported to the Government, whose orders are to be awaited for three months before such sentences are carried into execution.[7] It is also empowered to call for and inspect the records of the lower Courts, and to mitigate or annul the sentences of such Courts, when brought before it in the course of any official proceeding.[8]

(c) *Police Establishment.*

1. The Heads of Villages, besides being authorised to

[1] Bomb. Reg. VIII. 1831, s. 3.

[2] Act XXIX. 1845. [3] Bomb. Reg. III. 1830, ss. 10, 11.

[4] Bomb. Reg. VIII. 1831, s. 5. The duties of Judicial Commissioners of Circuit appear to be in practice confined to the controul and supervision of the judicial administration and the revision of sentences.

[5] Bomb. Reg. XIII. 1827, s. 21; Bomb. Reg. III. 1830, s. 11; Act V. 1841.

[6] Bomb. Reg. XIII. 1827, s. 27. [7] Act V. 1841, s. 5.

[8] Bomb. Reg. XIII. 1827, ss. 29, 30; Bomb. Reg. VIII. 1831, s. 7.

apprehend offenders and forward them to the District Police-officers, have a limited power of adjudging imprisonment not exceeding twenty-four hours, in trivial cases of abuse or assault.[1]

2. The District Police-officers, Mahalkarís, and Joint Police-officers are enjoined to apprehend persons charged with crimes and offences, and forward them to the Magistrates.[2] They are also empowered to punish petty offenders by fine not exceeding 15 rupees, or confinement not exceeding twenty days.[3]

3. Assistant Magistrates are empowered to try and sentence offenders to imprisonment for one year with hard labour, or solitary imprisonment for one month; but sentences for more than three months, or of solitary imprisonment, are to be confirmed by the Magistrate, who has, moreover, the power of revising all their sentences.[4] They have also the power of committing cases for trial before the Sessions Judges; and the Government can confer any of the powers of a Magistrate on them[5], but their sentences are still subject to the revision of the Sessions Courts.

4. The Zillah Magistrates, Magistrates[6], and Joint Magistrates are empowered to apprehend persons charged with crimes and offences, and to punish them on conviction by fine, imprisonment, and stripes, the power of imprisonment to extend to one year with hard labour, or solitary imprisonment for one month[7]; but for offences against the Post-Office Act they can punish to the extent of two years ordinary imprisonment and fine.[8] In cases worthy of heavier punishment, the offender is to be committed for trial to the Sessions Judge.[9]

[1] Bomb. Reg. XII. 1827. ss. 49, 50.

[2] Bomb. Reg. XII. 1827, s. 43; Bomb. Reg. III. 1833, s. 1; Act XX. 1835.

[3] Bomb. Reg. IV. 1830, s. 5; Bomb. Reg. III. 1833, s. 1.

[4] Bomb. Reg. IV. 1830, s. 3; Bomb. Reg. VIII. 1831, s. 2.

[5] Act XIV. 1835. [6] Act XIV. 1835.

[7] Bomb. Reg. XII. 1827, s. 9; Bomb. Reg. IV. 1830, s. 3; Bomb. Reg. VIII. 1831, s. 2.

[8] Act XVII. 1837, s. 34.

[9] Bomb. Reg. XII. 1827, s. 13; Bomb. Reg. III. 1830, s. 3; Bomb. Reg. VIII. 1831, s. 1.

III. JUSTICES OF THE PEACE.

The Justices of the Peace in India are of two descriptions, viz. those who, *virtute officii*, are empowered to act in that capacity by the immediate authority of Parliament, and those who are appointed by the local Government under Commissions issued in the name of Her Majesty.

I shall here state shortly the law relating to the Justices of the Peace, and describe their jurisdiction and functions.

Justices of the Peace were first established at Madras, Bombay, and Calcutta, by the Charter of Geo. I., in the year 1726, which appointed the Governors and Councils at those places to be Justices of the Peace, with power to hold Quarter Sessions.

The 38th section of the 13th Geo. III. c. 63, enacted, that the Governor-General and Council, and the Judges of the Supreme Court, should be Justices of the Peace for the Settlement of Fort William, and the Settlements and Factories subordinate thereto; and the Governor-General and Council were directed to hold Quarter Sessions at Fort William.

The Charter of Justice establishing the Supreme Court at Calcutta, which followed the Statute, authorised such Court to have controul over the Court of Quarter Sessions and the Justices, for any thing done by them while sitting as a Court of Quarter Sessions, or in their capacity as Justices, in the same manner and form as the inferior Courts and Magistrates in England are by law subject to the order and controul of the Court of King's Bench; and the Supreme Court was empowered to issue to them writs of Mandamus, Certiorari, Procedendo, and Error. By the 4th section of the same Charter it was ordained that the Judges of the Supreme Court at Fort William should respectively be Justices and Conservators of the Peace, and Coroners, within and throughout the provinces, districts, and countries of Bengal, Behar, and Orissa, and every part thereof; and should have such jurisdiction and authority as Justices of the Court of King's Bench have within England by the Common Law thereof.

The 33d Geo. III. c. 52, s. 151, after stating that the Gover-

nor-General of Fort William, and the Judges of the Supreme Court at Fort William, and the Governor and Council of Fort St. George on the coast of Coromandel, and the Governor and Council of Bombay, were the only persons authorised by law to act as Justices of the Peace in and for Bengal, Behar, and Orissa, the Presidency of Fort St. George, and the Presidency, Island, Town, and Factory of Bombay, and the places belonging and subordinate to the two last-mentioned Presidencies respectively, enacted, that it should be lawful for the Governor-General and Council of Fort William to appoint Justices of the Peace from the covenanted servants of the East-India Company, or other British inhabitants, to act within and for the said Provinces and Presidencies, and places thereto subordinate respectively, by commissions to be issued by the said Supreme Court on warrant from the said Governor-General in Council; with a proviso, however, that such Justices should not hold or sit in any Court of Oyer and Terminer, and Gaol Delivery, unless called upon by the Justices of the said Court, and specially authorised by Order in Council. The 153d section of the same Statute provided that all convictions, judgments, orders, and other proceedings before Justices of the Peace should be removable by Certiorari into the Court of Oyer and Terminer, which should have power to hear and determine the matter of such proceedings, in like manner as the Court of King's Bench at Westminster.

Section 155 also empowered the Governor-General and Governors in Council to call in the Justices of the Peace to sit in Council to hear appeals from the Provincial Courts; but such appeals have been since abolished.

The 39th and 40th Geo. III. c. 79, s. 2, and the 8th section of the Charter which followed that Statute, establishing the Supreme Court of Judicature at Madras, appointed the Judges of that Court to be Justices of the Peace, and Coroners, within and for the settlement of Fort St. George, and the town of Madras, and the Factories subordinate thereto, and all the territories subject to, or dependent upon, the Government of Madras. The 19th section of the same Statute provided that the Justices of the Peace in India might convict offenders

for breach of the Rules or Regulations made under the 13th Geo. III. c. 63, and order corporal punishment thereon; and that no such conviction should be reviewed, or brought into any Superior Court by Certiorari or appeal.

The Madras Charter of Justice gave the Supreme Court at that Presidency the same controul over the Court of Quarter Sessions and the Justices at Madras, as that exercised by the Supreme Court at Fort William in Bengal.

The 47th Geo. III. sess. 2, c. 68, s. 4, empowered the Governors and Members of Council of Madras and Bombay, to act as Justices of the Peace for those towns, and the settlements and Factories subordinate thereto respectively, and to hold Quarter Sessions; and they were further authorised, by the 5th section of the same Statute, to issue Commissions under the seals of the Supreme Court at Madras and the Court of the Recorder at Bombay respectively, to appoint covenanted servants of the East-India Company, or other British subjects, to be Justices of the Peace within the said Provinces and the places subordinate thereto respectively; and the said Justices of the Peace were made liable and subject to the rules and restrictions enacted with respect to the Justices of the Peace appointed by the Governor-General of Fort William, whose power of appointing Justices of the Peace for the Presidencies of Madras and Bombay was annulled by the next following section of the same Act.

Section 105 of the 53d Geo. III. c. 155, authorised the Magistrates in the Provinces to act as Justices of the Peace, and to have jurisdiction in cases of assault and trespass committed by British subjects on the Natives of India: the convictions by such Magistrates were, however, made removeable by Certiorari into the Courts of Oyer and Terminer and Gaol Delivery. And by the next section the said Magistrates were given a jurisdiction in cases of small debts due to Natives from British subjects.

The 4th Geo. IV. c. 71, s. 7, and the 10th section of the Charter of Justice which followed that Statute, establishing the Supreme Court of Judicature at Bombay, appointed the Judges of the said Supreme Court to be Justices and Conservators of the

Peace, and Coroners, within and throughout the settlement of Bombay, and the town and island of Bombay, and the Factories subordinate thereto, and the territories subject to, or dependent upon, the Government of Bombay.

The Bombay Charter of Justice gave the Supreme Court at that Presidency the same controul over the Court of Quarter Sessions and Justices at Bombay as that exercised by the Supreme Court at Calcutta.

It may be here remarked, that the jurisdiction of the Supreme Courts, both at Madras and Bombay, is generally restricted to British subjects, and this would seem to limit the power of the Judges to act in the Provinces as Conservators of the Peace.

The first Charter of Justice granted in the year 1826 to the Court of the Recorder at Prince of Wales' Island, Singapore, and Malacca, constituted the Judges of the said Court Justices and Conservators of the Peace within and throughout that settlement, and the places subordinate thereto.

By the 2d & 3d Will. IV. c. 117, the Governor-General in Council at Fort William, and the Governors in Council at Madras and Bombay respectively, were empowered to nominate and appoint, in the name of the King's Majesty, any persons resident within the territories of the East-India Company, and not being subjects of any foreign state, to act within and for the towns of Calcutta, Madras, and Bombay respectively, as Justices of the Peace.

It was provided by Act IV. of 1843, that an appeal should lie from all sentences passed by any Justice of the Peace acting without the local limits of the Supreme Courts, and from all sentences passed by any Magistrates exercising jurisdiction under the provisions of the 53d Geo. III. c. 155, to the same authority, and subject to the same rules, as are provided by the Regulations; and that cases so made the subject of an appeal should not be liable to a revision by Certiorari.

Act VI. of 1845 empowered the Supreme Courts at each of the Presidencies, upon the order or warrant of the executive Government, to issue separate Commissions to any persons not named in the then last general Commission of the

Peace, to be nominated Justices of the Peace for each respective Presidency. Such commissions were directed to be issued in the Queen's name, and tested by the Chief Justice of the respective Supreme Courts.

The jurisdiction of Justices of the Peace in India extends over the whole Presidency for which they are appointed, and they can exercise their functions in any part of it: it also extends over the following classes:—

1. All persons whatever, whether British or Native subjects, in respect of offences committed within the limits of the ordinary jurisdiction of the respective Supreme Courts of Judicature.

2. All British subjects resident in any part of the Presidency, except that, as regards crimes and offences triable by jury, and committed by British officers or soldiers at places more than 120 miles from the seat of Government, they are not called upon to interfere, such crimes being cognizable by a Court Martial.[1]

3. All persons who may have committed crimes or offences at sea.

The functions of a Justice of the Peace are threefold. First, the trial and punishment of offences by summary conviction, and without a jury; Secondly, the investigation of charges in view to the committal or discharge of the accused person; and, Thirdly, the prevention of crime, and breaches of the peace.

IV. ON APPEALS TO HER MAJESTY IN COUNCIL.

The right of appeal from the decisions of the Courts of highest jurisdiction in India to the Sovereign of this country in Council was originally and expressly reserved by the earlier Statutes and Regulations enacted for the administration of justice in India: this right of appeal exists equally from the decisions of the Supreme Courts of Judicature, established

[1] 3d & 4th Vict. c. 37, ss. 2—4.

by the Acts of Parliament and Charters of Justice, and from the Adawlut Courts constituted by the East-India Company.[1]

It is most desirable that the native suitor should be enabled to comprehend the progress of such appeals; that he should understand the best means of availing himself of the advantage of laying his grievance for the purpose of final decision, before the most learned persons in Great Britian; and that he should know how best to insure due attention to his interests, separated as he is from his Judges, Advocates, and Agents, by a distance of so many thousand miles. It is also of much importance, that before embarking in what has been, until very lately, so tedious and often so ruinous a proceeding, he should be taught in what manner his cause can be best conducted and brought to a result; and that he should be able to form some idea of the probable expenditure, both of time and money, in the event of his submitting his claims to the decision of Her Majesty in Council.

With a view to affording information on these points, I shall proceed, in the first place, to treat the subject of appeals to England historically; secondly, to describe the method of instituting such appeals in India; and lastly, I shall give, at considerable length, the course to be adopted in the procedure in this country.

1. History.

The first right of appeal to the Sovereign in Council from the judgments of the Courts in India was granted by the Charter of Geo. I. in the year 1726, establishing the Mayor's Courts, from the decisions of which Courts, as we have seen, an appeal lay, first to the Governors in Council at the respective Presidencies, and thence to England, where the amount in dispute exceeded the sum of 1000 pagodas.

The right of appeal from the decisions of the Supreme Courts

[1] It seems to have been assumed formerly that no appeal would lie to the Privy Council, except from a decree of the highest Courts in India; and final decisions of inferior Courts were considered not to be appealable. The Royal prerogative to admit such appeals was, however, undoubted. The 3d & 4th Will. IV. c. 41, s. 24, and the new Rules, have put an end to this uncertainty.

was first granted in the year 1773, by the 13th Geo. III. c. 63, the 18th section of which Statute enacted, that any person thinking himself aggrieved by any judgment or determination of the Supreme Court of Judicature at Bengal, should and might appeal from such judgment or determination to his Majesty in Council.

In the following year the Charter of Justice establishing the Supreme Court at Bengal was issued, and by its 30th section a right of appeal was reserved to suitors in civil causes, on their petition to the said Court: this right of appeal was regulated by certain rules hereafter to be noticed.

No appeal was allowed under the Charter in suits where the value of the matter in dispute was under the sum of 1000 pagodas. This amount has since been altered, as will presently be noticed.

The 37th Geo. III. c. 142, empowering the King to establish the Recorders' Courts at Madras and Bombay, and being generally for the better administration of justice at Calcutta, Madras, and Bombay, by section 16 provided that an appeal should lie to the King in Council from such Recorders' Courts.

By the Charter of the Supreme Court at Madras, a right of appeal was reserved from its decisions to dissatisfied litigants; and the provisions regulating such appeal were similar to those contained in the Charter of the Supreme Court at Bengal. The value of the matter in dispute was required to be in excess of 1000 pagodas, for an appeal to be allowable.

The Charter of the Supreme Court at Bombay also reserved a right of appeal to the Sovereign in Council; with the difference, however, that the value of the disputed matter was to exceed 3000 Bombay rupees.

In all cases, by the provisions of each Charter of Justice of the Supreme Courts, a reservation is made of the power of the Sovereign in Council, upon the petition of any person aggrieved by any decision of the Supreme Courts, to refuse or admit the appeal, and to reform, correct, or vary[1] such decision, according to the royal pleasure.

[1] See Smoult's Collection of Orders of the Supreme Court at Fort William in Bengal, p. 68. 12mo. Calc. 1834.

An appeal from the decisions of the Courts of the East-India Company to the Sovereign in Council was first allowed to suitors in such Courts in the year 1781, by the 21st Geo. III. c. 70, s. 21, under the provisions of which Act the Governor-General and Council, or some Committee thereof, or appointed thereby, were authorised to determine on appeals and references from the Country or Provincial Courts in civil causes. This Statute enacted, that the said Court might hold all such pleas and appeals, in the manner, and with such powers, as it theretofore had held the same, and should be deemed in law a Court of Record; and that the judgments therein given should be final and conclusive, except upon appeal to His Majesty, in civil suits only, the value of which should be of £5000 and upwards.

The limitation as to amount being the only restriction imposed by the 21st Geo. III. c. 70, and no rules having been made by His Majesty in Council for the conduct of the Indian Courts in dealing with the applications of appellants, it became necessary to declare by Regulation the time within which the petition of appeal was to be presented, to require security for costs, and to make divers other rules, by which suitors were to be bound. Regulation XVI. of 1797 of the Bengal code was accordingly passed, enacting that the previous Regulation[1], which declared that the decrees of the Sudder Dewanny Adawlut were final, had no reference to the appeal to His Majesty in Council allowed by the 21st section of the Statute 21st Geo. III. c. 70: the same Regulation proceeded to enact certain rules for the conduct of appeals, which rules, so far as they are now applicable, will be found in the following pages. The amount of the judgment appealed against was to exceed £5000 sterling, exclusive of costs, ten current rupees to be considered equivalent to £1 sterling. This amount has since been altered, as will be seen in the sequel.

In 1801[2] the constitution of the Sudder Dewanny Adawlut at Bengal was entirely changed, and the Governor-General was declared no longer to be a Judge of the Court, as has already

[1] Beng. Reg. VI. 1793, s. 29.

[2] Beng. Reg. II. 1801.

been mentioned. Although, however, the Governor-General had thus divested himself of the power of administering justice in Bengal, he for some time exercised an appellate jurisdiction in cases decided by the Sudder Adawlut at Madras, such appeal having been expressly reserved by the Regulations of 1802.[1]

In the year 1818 the Governor-General relinquished the authority, theretofore exercised by him, of receiving appeals from the decisions of the Sudder Adawlut at Madras; and all the rules relating to such appeals to the Supreme Government were rescinded. At the same time a provision was made that an appeal should lie from such decisions to the King in Council, and rules were framed for the conduct of the appeals, similar to those contained in Regulation XVI. of 1797 of the Bengal code.[2] No restriction, however, as to the appealable amount was fixed; and accordingly, in many instances, the appeals from Madras were for sums below £5000.

At Bombay, by the Regulations passed previously to the year 1812 for the establishment of the general Courts of Justice at Salsette, Surat, Baróch, and Kaira, for the trial of civil suits, an appeal from the decisions of either of those Courts, and from that of the Provincial Court of Appeal, was allowed to the Sudder Adawlut at Bombay, but to no other ultimate tribunal.[3] No reservation had been in any instance made of an appeal to the Governor-General and Council, or to the King

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[1] Mad. Reg. V. 1802, ss. 31—36.

[2] Mad. Reg. VIII. 1818. This Regulation, declaratory that appeals should in future be transmitted from the Madras Sudder Adawlut to the King in Council, arose from the recognition that the Governor-General had no power to decide appeals in the last resort. An appeal from the decision of the Sudder Adawlut seemed of right to lie to the King in Council. A question on this subject was referred to the Advocates-General of the three Presidencies, who were of opinion that the appeal would lie of right to the King in Council, from Madras and Bombay, from any final decision, for any amount. The reference, it appears, arose on a case of some magnitude, which had been appealed to the Governor-General in Council; and the result was, that his Lordship in Council declared that the appeal was no longer to be made to him, and directed the Madras Government to publish the above Regulation.—See Mr. R. Clarke's Evidence before the House of Lords in 1830, No. 1543, p. 180, 4to Edit.

[3] Bomb. Reg. IV. 1812, Preamble.

in Council under the provisions of the Statute 21st Geo. III. c. 70, s. 21. By a Regulation passed in the above year, however, rules were enacted for regulating appeals from the Court of Sudder Adawlut to His Majesty in Council, in suits of the value of £5000, exclusive of costs.[1]

In the same year a Regulation was also passed for defining the powers and duties of the Sudder Adawlut, and the rules contained in the previous Regulations were re-enacted[2]; in the year following, however, all these rules were rescinded, doubts having arisen as to the legal competency of the Government of Bombay to admit of appeals from the Sudder Adawlut to the King in Council under the Statutes of the realm.[3]

Regulation V. of 1818 of the Bombay code was passed to remedy the defect in the legislature caused by the improvident rescission of the rules above mentioned. This Regulation provided for the reception and transmission of appeals from the Court of Sudder Adawlut to His Majesty in Council, and certain rules, similar to those already noticed, were enacted, regulating the same: the restrictive clause as to the appealable amount was, however, omitted.

The Governor of Bombay relinquished the judicial authority in 1820[4], and the Sudder Adawlut was reconstituted as in the other Presidencies: the right of appeal to the Sovereign in Council, established by Regulation V. of 1818, however, remained untouched.

In the year 1827, when the new code of Bombay Regulations was promulgated, fresh provisions were made for appeals from the judgments of the Sudder Dewanny Adawlut; the provisions, however. were, in fact, the same as those already in force, and the restriction as to the value of the matter in dispute was again most unaccountably omitted.[5] Thus, from the year 1818, there was no restriction in this particular, and the consequence was, that a large number of appeals were forwarded to this country from Bombay, involving such trivial

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[1] Bomb. Reg. IV. 1812. ss. 2—7. [2] Bomb. Reg. VII. 1812, ss. 31—36.
[3] Bomb. Reg. II. 1813. [4] Bomb. Reg. V. 1820.
[5] Bomb. Reg. IV. 1827, s. 100.

amounts as to become a source of great grievance to the respondents.

In all the Presidencies reservation was made, by the respective Regulations, of the Sovereign's right to reject or receive all appeals, notwithstanding any provisions in the said Regulations.

Having thus far considered historically the several provisions of the Statutes, Charters, and Regulations, it becomes requisite to inquire into their efficiency when brought into operation. At the very outset we find that these enactments, especially as applied to the appeals from the Adawlut Courts, were almost totally useless: not that they were unskilfully framed, or that they were inapplicable to the furtherance of justice; but the ignorance of the Natives of the steps necessary to be taken to bring an appeal before the Privy Council, and the very slight intercourse with Europeans enjoyed by many of the appellants, prevented the enactments relating to appeals from being either profitably or extensively applied.

The appellants from the decisions of the Supreme Courts, never laboured under the disadvantages which pressed upon the suitor considering himself aggrieved by the decree of a Court of Sudder Dewanny Adawlut. Rules for appeals were laid down in the Charters of Justice, and in the Rules and Orders of the Courts themselves, which had received the sanction of his Majesty in Council. The native suitors were, almost in every case, in the habit of close intercourse with Europeans; the proceedings of the Supreme Courts resembled those in England; and the suits were carried on in those Courts by English Counsel and Attornies, the latter of whom, in a case of appeal, appointed a Solicitor in this country, under whose management the appeal was conducted. On the other hand, the appellants from the Sudder Dewanny Adawluts, who were generally Natives of rank and wealth, living in the Mofussil, and who, having but little intercourse with Europeans, were conversant more or less only with their own respective laws, and the Regulations enacted by the Company's Government, entertained but vague notions of the laws and constitution of this country; and, until lately, their legal advisers, and the

practitioners in the Courts, were Natives equally ignorant with themselves. The papers in an appeal from the Supreme Courts were obtained by the Attorney who conducted the case in India, and forwarded by him to an agent in England: the Supreme Court Attorney was thus a link of connexion between the appellant and the Privy Council. No such connecting link existed in the case of the appellants from the Sudder Dewanny Adawluts: the transcript records were prepared by the Government, and transmitted to England; and when once placed in the hands of Government, the Vakeels of the appellants were of no further use; and they themselves being ignorant that agents were requisite in England, or that any other steps were necessary to be taken, the appeals in consequence stood still. The parties in India having conformed, to the utmost of their ability, to the Regulations of the Government, concluded, that when the documents under the seal of the Court were transmitted through the Indian Government to this country, the Court of the Sovereign in Council would take the case into consideration, and return a decision thereon. Such expectation was clearly in conformity with the practice that obtained, as regarded Madras, up to the year 1818, before which time as we have seen, an appeal was admitted from the Madras Sudder Adawlut to the Governor-General in Council at Calcutta. When the documents, properly attested &c., were sent to Calcutta, a decree was in due time returned, confirming or reversing that of the Sudder Adawlut at Madras, without any thing being required to be done by the parties. Thus, when appeal cases were transmitted to England, the parties patiently waited for a decision, but in vain; and in many instances the property in dispute became eaten up by public and private debts, and the litigants were either ruined or greatly impoverished.[1]

Whilst things remained in this state, the right of appeal was in fact productive of harm instead of benefit, inasmuch as the parties made deposits, which were not released, even in cases

[1] See Mr. R. Clarke's Evidence before the House of Lords in 1830, No. 1524, p. 178, 4to. Edit.

where the suits had been compromised. Mr. R. Clarke, in his Evidence before the House of Lords in 1830[1], mentions four cases in which the parties had compromised their suits in India: they sent notice of their compromise to England, through the same channel by which they had forwarded their appeals. In one case the total amount litigated was held in deposit, and in the others the sum deposited for fees, which amounted to about £1000 was held in deposit. The restoration of the deposits was refused to the parties in India, because the Courts there had no knowledge of what had been done by the Court appealed to in England with regard to the suits.

From the year 1773, when, as we have seen, the power of appeal from the Supreme Courts in India was originally allowed, until the year 1833, when the Statute 3d & 4th Will. IV. c. 41, was passed, about fifty appeals were instituted, the first being in 1799.

It was about the year 1826 that the late Sir Alexander Johnston, while engaged in some antiquarian researches[2], discovered that there were a large number of cases involving questions of native law of great importance, which had been in appeal from the Courts in India before the Privy Council for a great many years, and that they had not been heard in consequence of the ignorance of the parties as to the proceedings necessary to be taken in this country. Subsequently to this an application was made by the Court of Directors to the Privy Council for permission to bring forward appeals on behalf of suitors; and the transcripts of the proceedings in India, accumulated in the Privy Council Office, were sent to the East-India House, for the purpose of being examined, and a report drawn up. The East-India Company's Solicitor accordingly sent in a report to the Honourable Court, stating the cause of action, the names of the parties, the

[1] See Mr. R. Clarke's Evidence before the House of Lords in 1830, No. 1522, p. 177, 4to. Edit.

[2] Transactions of the Royal Asiatic Society, Vol. III. Appendix 2, p. x. note.

amount sued for, and all other requisite particulars respecting each appeal, of which the records had been received at the office of the Privy Council: the report was forwarded to the Board of Controul for the purpose of being laid before the Privy Council.

It appeared, on examination of this report, that the earliest appeal from Bengal was on a decision that was pronounced in the year 1799. Twenty-one appeals in all were pending from Bengal, ten from Madras, and seventeen from Bombay. None of those from Madras and Bombay were of earlier date than the year 1818, according to the provisions of the Regulations[1]; no appeals having been instituted from Bombay whilst the Regulations of 1812 allowing the right were in force.

The Honourable Court of Directors, having thus taken the first step in the right direction towards remedying the failure of justice, several learned persons were consulted as to the best means of forwarding the appeals. Accordingly, in the year 1832, Sir James Macintosh, Sir Edward Hyde East, and Sir Alexander Johnston, were requested by the Board of Controul to report on the best course to be adopted in order to cause all the old appeals to be put in train for decision, and Mr. Richard Clarke, formerly of the Madras Civil Service, was engaged to arrange all the papers connected with the different appeals; and a report was drawn up, and submitted to the Court of Directors, of all the appeals which were then lying in the Privy Council Office, and in which no proceedings were being taken by the parties.

The attention of the legislature had now been called to the subject, and the 3d & 4th Will. IV. c. 41, was passed on the 14th August 1833. This important Act established the Judicial Committee of the Privy Council, and laid down certain rules of procedure, which will be recurred to in the proper place; parties in appeals from India, were insured a certain and speedy hearing; and efficiency was given to the pre-existing Laws and Regulations, which had, by long experience, been found wholly ineffective, and indeed, as we have

[1] Mad. Reg. VIII. 1818. Bomb. Reg. V. 1818.

seen, productive of something more than a mere failure of justice. The appointment of retired Indian Judges under this Act as Assessors of the Court brought an amount of knowledge and experience to bear upon most of the questions arising in Indian appeals, which could not by any other means have been rendered so readily available.[1] The East-India Company were also authorised to appoint Agents and Counsel, to conduct the appeals from the Sudder Dewanny Adawluts, and bring them to a hearing, and to watch over the interests of the parties. All the long-standing appeals, and those admitted by the Sudder Dewanny Adawluts before the 1st of January 1846, were affected by this Act, and the orders made in pursuance of it: in the year 1845, however, the enactment of the 8th & 9th Vict. c. 30, took the management of all appeals from such Courts, admitted after that date, out of the hands of the East-India Company.

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[1] It is surprising the Government of this country should never have thought it necessary to appoint any of the retired Judges of the East-India Company's Service to sit in the Judicial Committee of the Privy Council as Assessors in Indian appeal cases, since, in appeals from the decisions of the Company's Courts, the peculiar experience of the Judges of the Queen's Courts is necessarily applicable to such cases only as involve points of Hindú or Muhammadan law. A large proportion of the suits in the Courts of the East-India Company, including almost all those which relate to landed property in the Mofussil, are connected with the revenue; but the Statute 21st Geo. III. c. 70, s. 8, expressly forbids the Supreme Court at Calcutta from having jurisdiction "in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the Regulations;" and the Charters of the Supreme Courts at Madras and Bombay contain similar prohibitory clauses (Mad. Chart. s. 23; Bomb. Chart. s. 30). Again, all other questions which turn upon the Regulation law applying to persons and things without the jurisdiction of the Supreme Courts can obviously only be determined by the Courts of the East-India Company. It follows then, of course, that in every one of these instances the subject matter of an appeal from the decision of a Company's Court is necessarily as foreign to the present Assessors as to the other members of the Judicial Committee, whilst a Judge of the Chief Courts of the East-India Company would at once be able to remove the doubts and difficulties by which such questions are usually surrounded.

2. Institution of Appeals in India.

It now becomes necessary to say a few words respecting the mode in which appeals are instituted in India, and of the necessary proceedings in that country.

The appeals from the Supreme Courts are under the authority of the Statutes and Charters, and are regulated by the practice of such Courts.

By the Bengal Charter of Justice, in section 30 *et seq.*, certain rules are laid down regulating the admission of appeals from the Supreme Court of that Presidency: these rules are still in force, excepting that the amount of the matter in dispute for which an appeal might be instituted has been altered, for all the Courts in India, to the minimum sum of 10,000 Company's rupees.

The rules now in operation are as follows:—The person aggrieved by any judgment, decree, or decretal order, must present his petition of appeal to the Supreme Court, stating the cause of appeal; and the Supreme Court is empowered to award that the said judgment, decree, rule, or order, shall be carried into execution, or that sufficient security shall be given for the performance of the said judgment, decree, rule, or order; and if the Court shall think fit to order the execution of the same, security shall be taken from the other party for the performance of the order or decree of Her Majesty in Council; and in all cases security is to be given for costs, and for the performance of the judgment or order on appeal. The appeal having then been admitted, the Supreme Court is to certify and transmit, under the seal of the Court, to the Privy Council, a copy of all the evidence, proceedings, judgments, decrees, and orders, in the cause appealed; and no appeals are to be allowed by the Court, unless the petition of appeal be presented within six months from the day of pronouncing the judgment, decree, or decretal order complained of.

The Charters of Madras and Bombay contain similar rules, excepting that, in both, the words "judgment or determination" are used, instead of "judgment, decree, or decretal order,"

and "judgment, decree, rule, or order." It has been held, however, that the word "determination" in the Charters of Madras and Bombay, is equivalent to the "decree, or decretal order;" and it was decided that the right of appeal from all the Supreme Courts is not confined to cases where a right or duty is finally decided, but includes interlocutory judgments, decrees, or decretal orders.[1] It seems that no appeal from a final judgment will open prior interlocutory decrees or orders in respect of which the time for appealing has elapsed.[2]

No appeal will be allowed against a verdict: the appeal is directed to be by persons aggrieved by any judgment, decree, order, or rule of the Court; words which clearly do not comprehend the mere finding of a verdict, whether it be on the Common-law side of the Court, and afterwards to be carried into effect by a judgment, or upon an issue directed to inform the Court sitting in Equity what decree or order it is to pronounce. It is not certain that the judgment, decree, or order, will correspond with the finding; but if it should do so, the effect of an appeal against the verdict is obtained by an appeal against the judgment or order founded upon it.[3] In one case, where an issue at law had been directed from the Equity side of the Court, and a verdict had been found for the defendant, the plaintiff, having first applied (on the Equity side) for a new trial which was refused, obtained an order *nisi* that her petition of appeal against the order refusing a new trial should be allowed; but this was expressly granted as a liberal construction of the power of appeal, and not in any way as favouring the doctrine that an appeal can lie against a verdict.[4]

An order or judgment on consent cannot be appealed from, not coming within the class of orders by which the party against whom it is made may be said to be aggrieved.[5]

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[1] *Nathoobhoy Ramdass* v. *Mooljee Madowdass*, 2 Moore Ind. App. 169.

[2] *The East-India Company* v. *Syed Ally Khan*, 1 Knapp, 331 note.

[3] See Minute on Appeals, 1 Morton, 61, and the case of *Nathooboy Ramdass* v. *Mooljee Madowdass*, 2 Moore Ind. App. 169.

[4] *Sreemutty Seboosoondery Dossee* v. *Sreemutty Comulmoney Dossee*, 1 Morton, 66.

[5] *Rogober Dyal* v. *The East-India Company*, 1 Fulton. 146.

An order by the Supreme Court at Madras, made at its own instance, for the dismissal of the Master of the Court for alleged official misconduct in the taxation of a bill of costs, was held not to be an appealable grievance within the Madras Charter of Justice; and although the Supreme Court had allowed the appeal, special leave to appeal was granted by the Queen in Council.[1]

By all the Charters of the Supreme Courts, those Courts possess absolute power to allow or deny an appeal in criminal cases.[2]

Appeals from the Courts of Sudder Dewanny Adawlut to the Privy Council are instituted, and the procedure in India is governed, by the provisions of the Regulations as modified by the Statutes, the Orders in Council, and the Acts of the Government of India.

Regulation XVI. of 1797 of the Bengal code, after stating that no Rules had been prescribed by the 21st Geo. III. c. 70, respecting the admission of appeals thereby authorised, established, as I have already mentioned, certain rules for that purpose. The Madras Regulation VIII. of 1818, and section 100 of the Bombay Regulation IV. of 1827, subsequently enacted similar rules to those promulgated by the Bengal Regulation. The minimum value of the subject-matter in dispute, in all appeals from every Court in India, has been since fixed, by the Order in Council of the 10th April 1838, at the sum of 10,000 Company's rupees; and the Act of Government XI. of 1839 has abolished institution fees and stamps on the petitions of appeals and transcripts of proceedings; with these exceptions (as the Bengal Regulation fixed an appealable sum, and all the Regulations required transcripts to be written on stamped paper), the general rules of procedure enacted by the Regulations above mentioned remain in force. By these Rules, so far as they are now in operation, the petition of appeal must be

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[1] *In the matter of Minchin*, 4 Moore Ind. App. 220.

[2] This was decided by the Supreme Court at Bombay, *In the matter of the petition of the wives of Alloo Paroo*, Vol. II. of this work, p. 384. The decision was afterwards confirmed by the Judicial Committee of the Privy Council; *The Queen* v. *Eduljee Byramjee*, 3 Moore Ind. App. 468; and *The Queen* v. *Alloo Paroo*, *Ib.* 488.

presented to the Chief Civil Court within six months from the date on which the judgment appealed against may have been passed. The Court may order their judgment to be carried into execution, taking security from the party in whose favour the decree may have been passed to abide the event of the appeal; or suspend the execution, taking the like security from the party left in possession; but in all cases security is to be given by the appellants to the satisfaction of the Sudder Dewanny Adawlut, for the payment of all costs likely to be incurred by the appeal, and for the performance of the final order or judgment on the appeal; the appeal to be declared admitted on receiving such security, and notice to be given to the parties to prosecute and defend the same, according to the established mode of proceeding. It is also provided by these Regulations, that, in all cases wherein the Chief Civil Court may admit an appeal to the Sovereign in Council, the Court is to cause two copies of the whole of the proceedings and evidence to be prepared in English, at the expense of the appellant, and transmitted under the official seal and signature of the Register to the Governor-General in Council, to be forwarded to Her Majesty in Council: the parties are also to be furnished with other copies of the proceedings on application, provided they agree to pay the expense of preparing the same; and copies of any local Regulations under which the judgment may have been passed, or which may have been referred to, are to accompany the proceedings. It is also lastly provided, by the same rules, that nothing contained therein shall be understood to bar the exercise of Her Majesty's pleasure upon all appeals to her, either in rejecting or admitting such as she may think proper under the Statute.

By the Regulations and practice of the Chief Courts of Civil Judicature, heavy institution fees and stamp duties on petitions of appeals, and the transcripts of the proceedings and evidence to be forwarded to the Privy Council, were formerly imposed: these were abolished, as above mentioned, by Act XI. of 1839, which enacts that no stamp duty or institution fee shall be payable in respect of any proceeding in any appeal, or in respect of any paper, or copy of any paper, necessary for any appeal from any

Court of the East-India Company to Her Majesty in Council. This Act gives a most effective and beneficial relief to the Indian appellant, the institution fees and the high stamp on the petitions of appeal, and the transcripts of proceedings and evidence, having been felt to be an exorbitant tax upon justice. Another useful enactment respecting the preparation of copies and translations of proceedings in appeals was passed in 1844. This Act, No. II. of that year, provides, that in all cases of appeals to the Queen in Council from judgments delivered by the Courts of Sudder Dewanny Adawlut at Fort William, Fort St. George, Bombay, and Allahabad[1], the expense of preparing two copies of all the proceedings held, and judgments or orders given in the case appealed, including the whole of the evidence and documents, and of translating into the English language such of the aforesaid proceedings as may have been originally drawn out in the country languages, shall be defrayed by the parties prosecuting the appeal; and it is further enacted, that the Courts of Sudder Dewanny Adawlut are empowered and required to cause the deposit by the appellant, within the time allowed for the furnishing security for costs of appeal, of such a sum as shall be sufficient to cover the expense of making the two aforesaid copies; and when such deposit shall have been made, and not till then, to declare the appeal admitted, and to give notice thereof to the appellant and respondent respectively.

It has, I believe, always been the practice of the Courts of Sudder Dewanny Adawlut to give great latitude in the admission of appeals to England, but of course, in all cases, a salutary controlling power has been exercised by the Judges. By Construction No. 1102, dated the 18th August 1837, no appeal can lie to Her Majesty in Council from the orders passed by the Court in *Miscellaneous* cases; and it was held[2]

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[1] The Sudder Dewanny Adawlut at Allahabad was the Chief Civil Court established for the North-Western Provinces, by Beng. Reg. VI. 1831. It has been since removed to Agra, by Proclamation of the Governor General, under section 3 of the same Regulation.

[2] *Sayyad Mahummad Ali Khan* v. *Nagar Ara Begum.* 1 Sevestre, 113.

that no appeal to England can lie from an interlocutory order; the words "judgment, decree, or decretal order," in the Order in Council of the 10th April 1838, clearly referring to decisions or judgments passed by the Court in regular cases, and not in any way to interlocutory orders.

By a Rule issued by the Judicial Committee of the Privy Council, in accordance with the 7th and 8th Vict. c. 69, s. 11, on the 12th February 1845, it was ordered, that when any appeal should be prosecuted from any judgment of any Court in the Colonies or Foreign Settlements of the Crown, the reasons given by the Judges of such Court, or by any of such Judges, for or against such judgment, should be, by the Judge or Judges of such Court, communicated in writing to the Registrar of such Court, or other officer, whose duty it is to prepare and certify the transcript record of the proceedings in the cause; and that the same should be by him transmitted to the Clerk of Her Majesty's Privy Council at the same time when the documents and proceedings proper to be laid before Her Majesty in Council upon the hearing of the appeal are transmitted.[1]

Such are the Rules established by the Charters and Regulations. And, to sum up, the method of proceeding in an appeal in India is as follows:—Within six months from the date of the judgment, decree, or decretal order complained of, a petition is to be presented to the Court for leave to appeal to Her Majesty in Council; and the matter in dispute being of the amount of 10,000 Company's rupees at least, the appeal will be granted as a matter of right, the proper security for costs being perfected as provided by the Charters and Regulations. The securities being perfected, and the appeal admitted, no further proceeding is of necessity taken by the parties; the selection and arrangement of the documents to form the transcript record to be sent to England is made by the

[1] It seems doubtful whether this rule applies to the Courts of Sudder Dewanny Adawlut as "Courts in the Foreign Settlements *of the Crown*," though of course it is applicable to the Supreme Courts. Mr. Henry Reeve, the Appeal Clerk of the Privy Council, informs me that he has never received any "reasons" from Sudder Judges.

proper officer of the Court whose judgment is appealed against, it being directed that the Court appealed from shall, at the cost of the appellant, certify and transmit to Her Majesty two copies, in the English language, of all proceedings, evidence, judgments, decrees, and orders, had or made in such causes so appealed so far as the same relate to the matter of appeal: such copies to be certified by the seal of the Court. These copies, along with the appeal, are transmitted to the Privy Council, and to the appellant's agent in England: another copy is usually furnished to the respondent, for the purposes of the appeal. It seems that when once the appeal has been presented in the Courts in India it cannot be withdrawn, nor the securities for costs vacated even by consent, without an order to that effect from the Queen in Council. Nor can the sentence be executed, or other proceedings be had in the cause, without security being given for the judgment to be pronounced on the appeal.[1]

All questions relative to the amount, sufficiency, and reception of securities for costs on appeals, are to be decided upon by the Court in India.[2] The mere permission to appeal, though no appeal be actually tendered, appears to put a stop to the jurisdiction of the Courts below; and the parties cannot adjust their differences without a positive order obtained on petition from Her Majesty in Council to suspend further proceedings and dismiss the appeal.

It would be difficult, if not impossible, for one who has not had the advantage of practising in the Indian Courts, to enter more fully into the details of the practice of such Courts respecting the institution, admission, and transmission of appeals from their decisions to the Privy Council[3]; these details are of course well known to the practitioner in India, and I therefore pass at once to the procedure in this country,

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[1] See Macqueen's Appellate Jurisdiction of the House of Lords and Privy Council, p. 708.

[2] *Cambernon* v. *Egroignard*, 1 Knapp, 251.

[3] Many points of practice regarding appeals to England, both from the Supreme and East-India Company's Courts, will be found in the decisions collected under the title "APPEAL" in the Digest.

trusting that the information contained in the following pages may prove both interesting and useful to the Indian appellant.

3. Procedure in England.

The first establishment of any definite Rules of practice strictly applicable to Indian appeals in this country, dates from the passing of the 3d and 4th Will. IV. c. 41, in August 1833, intituled "An Act for the better Administration of Justice in His Majesty's Privy Council." I shall proceed to give an abstract of its contents, and then pass in review the Orders in Council, made in pursuance of the said Act, and the subsequent Statutes bearing upon the subject in consideration. All these Statutes and Orders relate mainly to the procedure in this country, though in some instances they are merely confirmatory of the Charters and Regulations (as for instance in fixing the time in which an appeal may be preferred in India). Where they actually rescind the Rules contained in the Charters and Regulations (as by fixing a different value of the matter in dispute necessary for the admission of an appeal) such rescission has been already noticed.

The 3d and 4th Will. IV. c. 41, s. 1, provided that the President for the time of His Majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of His Majesty's Privy Council as should from time to time hold any of the Offices following, that is to say, the Office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court in Bankruptcy, and also all persons members of His Majesty's Privy Council, who should have been President thereof, or held the Office of Lord Chancellor of Great Britain, or should have held any of the other Offices above mentioned, should form a Committee of His Majesty's said

Privy Council, and should be styled "The Judicial Committee of the Privy Council:" provided, nevertheless, that it should be lawful for His Majesty from time to time, as and when he should think fit, by his Sign Manual to appoint any two other persons, being Privy Councillors, to be members of the said Committee. It was also enacted by the 3d section of the same Act, that all appeals, or complaints in the nature of appeals, which, by virtue of any law, statute, or custom, might be brought before His Majesty in Council, from or in respect of the determination, sentence, rule, or order, of any Court, Judge, or Judicial Officer, and that all such appeals then pending or unheard, should be referred by His Majesty to the said Judicial Committee, and a report or recommendation thereon should be made to His Majesty in Council for his decision thereon, as theretofore had been the custom in references of a like nature.

The succeeding sections of the Act successively provided, amongst other things, that evidence might be taken *vivâ voce* or upon written depositions; that the Committee might order any particular witnesses to be examined as to any particular facts, and might remit causes for rehearing, and direct additional or rejected evidence to be taken, and that on such remitting the King might direct feigned issues to be taken in any Courts in His Majesty's dominions abroad; that every witness should be examined on oath, and be liable to punishment for perjury, and that the said Judicial Committee might direct new trials of issues; that certain powers given to certain Courts, and provisions made by the 13th Geo. III. c. 63, and the 1st Will. IV. c. 22, for the examination of witnesses by commission upon interrogatories or otherwise, should extend to and be exercised by the said Judicial Committee; that the costs of any appeal, or matter, or issue referred to or directed by the Judicial Committee, should be in the discretion of the said Committee, and taxed by the Registrar; that the orders or decrees made by His Majesty in pursuance of the direction of the said Judicial Committee should be enrolled; that a Registrar should be appointed by the King, to whom matters should be referred in the same manner as they are referred by the Court of Chancery to a Master; that the attendance of

witnesses and production of any deeds, evidences, or writings, should be compelled by *subpœna;* that the time for appealing should be the same as then existing by any law or usage, or, subject to any chartered or constitutional right of any Colony or Plantation in the absence of such law or usage, within such time as His Majesty in Council should order; and that the decrees for Courts abroad should be carried into effect as directed by His Majesty in Council. By the 22d section of the same Act it was provided, that as various appeals had been admitted by the Courts of Sudder Dewanny Adawlut at the three Presidencies, and the transcripts of the proceedings had been from time to time transmitted to the Privy Council Office, but the suitors had not taken the necessary measures to bring on the same to a hearing, His Majesty in Council might direct the East-India Company to bring appeals from the Sudder Dewanny Adawluts of the three Presidencies to a hearing, and to appoint Agents and Counsel for the different parties in such appeals, and make such orders for the security and payment of costs as His Majesty in Council should think fit; and that such appeals should be heard and reported to His Majesty in Council, and determined in the same manner, and the decrees of His Majesty in Council were to have the same force and effect, as though the same had been brought to a hearing by the direction of the parties appealing in the usual course of proceeding. It was, however, provided, that such last-mentioned powers should not extend to any appeals from the said Courts of Sudder Dewanny Adawlut, other than appeals in which no proceedings had been or should thereafter be taken in England, on either side, for a period of two years subsequent to the admission of the appeal by such Court of Sudder Dewanny Adawlut. This 22d section was repealed by the 8th and 9th Vict. c. 30, as will be presently seen. By the 23d section, the death of any of the parties interested in any appeal was not to affect any order made; but in all cases where any such appeal had been withdrawn or discontinued, or any compromise made before the hearing thereof, the determination of the Committee was declared to be of no effect. The 24th section empowered His Majesty in Council to make rules and

orders for regulating the mode, form, and time of appeal to be made from the decisions of the Sudder Dewanny Adawluts, and any other Courts of Judicature in India, and for the prevention of delays in making or hearing such appeals, and as to the expenses and the amount of the property in respect of which the appeal might be made. By the 30th section it was enacted that two members of the Privy Council, who should have held the office of Judge in the East Indies or any of His Majesty's dominions beyond the seas, might attend the sittings of the Judicial Committee of the Privy Council as Assessors, but without votes, at a salary of 400*l.* a year. These appointments are at present vacant.

Three Orders in Council were made in the year 1833, under the 24th section of the preceding Act. By the first, dated the 4th September, it was ordered that the East-India Company should bring to a hearing before the Judicial Committee of the Privy Council all the cases of appeal mentioned in a list appended to the said Order, the same being appeals from Courts of Sudder Dewanny Adawlut in the East Indies, in which no proceedings had been taken in England, on either side, for a period of two years subsequent to the admission of the said appeals respectively. The list referred to contained eighteen cases from Bengal, ten from Madras, and fifteen from Bombay. The second Order, dated the 18th November, gave further directions in pursuance of the said Act, and ordered that the said East-India Company should appoint Agents and Counsel, when necessary, for the different parties in the appeals mentioned in the said list, to transact and do all things as had been usual by Agents and Counsel for parties in appeals to His Majesty in Council, from the colonies or plantations abroad. The third Order, of the same date as the preceding one, directed that the said Company should be entitled to demand payment of their reasonable costs of bringing appeals to hearing by virtue of the said Act, to such an amount and from such parties, and should have such lien for the said costs upon all monies, lands, goods, and property whatsoever, and upon all deposits which might have been made, and all securities which might have been

given in respect of such appeals, as the Judicial Committee of the Privy Council should direct.

Under the same Act His Majesty did, by his Order in Council, dated the 16th January 1836, approve certain Rules for the regulation and conduct of appeals, and amended a portion thereof by another Order of the 10th August in the same year; the Rules contained in these Orders were, however, never acted upon, and they were cancelled and rescinded by Her present Majesty in Council, by an Order dated the 10th April 1838, which substituted other Rules and Regulations applicable to Indian appeals.

By this last-mentioned Order it was provided—

"1. That from and after the 31st day of December next, no appeal to Her Majesty, her heirs and successors in Council, shall be allowed by any of Her Majesty's Supreme Courts of Judicature at Fort William in Bengal, Fort St. George, Bombay, or the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, or by any of the Courts of Sudder Dewanny Adawlut, or by any other Courts of Judicature in the territories under the Government of the East-India Company, unless the petition for that purpose be presented within six calendar months from the day of the date of the judgment, decree, or decretal order complained of, and unless the value of the matter in dispute in such appeal shall amount to the sum of 10,000 Company's rupees at least; and that, from and after the said 31st day of December next, the limitation of £5000 sterling heretofore existing in respect of appeals from the Presidency of Fort William in Bengal, shall wholly cease and determine.

"2. That in all cases in which any of such Courts shall admit an appeal to Her Majesty, her heirs and successors in Council, it shall specially certify on the proceedings that the value of the matter in dispute in such appeal amounts to the sum of 10,000 Company's rupees or upwards, which certificate shall be deemed conclusive of the fact, and not be liable to be questioned on such appeal by any party to the suit appealed.

"3. Provided nevertheless, that nothing herein contained shall extend, or be construed to extend, to take away, diminish,

or derogate from the undoubted power and authority of Her Majesty, her heirs and successors in Council, upon the petition at any time of any party aggrieved by any judgment, decree, or decretal order of any of the aforesaid Courts, to admit an appeal therefrom upon such other terms, and upon and subject to such other limitations, restrictions, and regulations, as Her Majesty, her heirs and successors, shall in any such special case think fit to prescribe.

"4. That on the arrival of the transcripts of proceedings in an appeal to Her Majesty, her heirs and successors in Council, from any of the said Courts of Sudder Dewanny Adawlut, or any other Courts in the East Indies constituted by the East-India Company or any of their Governments from which an appeal lies to Her Majesty in Council, such officer of the East-India Company as the Court of Directors of the said Company shall from time to time appoint, shall forthwith give notice to the Clerk of the Council thereof, stating, at the same time, the names of the parties to the appeal, and the date of the decree appealed from, and that such notice shall be duly registered in the Council Office.

"5. That the said transcripts and proceedings shall be kept at the East-India House, or at such other convenient place within the cities of London or Westminster as the said Court of Directors shall from time to time appoint; the agents respectively conducting and defending such appeals in this country, being at liberty to take all the necessary copies and extracts from the said proceedings, and to examine the same from time to time; and it shall be the duty of such Officer, by himself or his sufficient deputy, to produce the original transcripts before the Judicial Committee, upon the hearing of such appeal, upon due notice for that purpose previously given, and upon all other occasions when thereunto required by the Privy Council or the Judicial Committee.

"6. That in default of the petition of appeal of the appellants being lodged in the Council Office within three calendar months from the Registration of the arrival of such transcripts, or in default of the appellant's case being carried in within one year from the time of such Registration, the respondent shall be entitled in

either case to move to dismiss the appeal for want of prosecution; and in the event of the respondent's not bringing in his case within one year from the time of such Registration, the appellant shall be entitled to apply to have the case heard *ex-parte*."

In the month of July 1843 was passed the 6th and 7th Vict. c. 38, intituled "An Act to make further Regulations for the facilitating the hearing Appeals and other matters by the Judicial Committee of the Privy Council." This Act relates principally to appeals from the Ecclesiastical and Admiralty Courts; but it also enacted generally as regards appeals, that they might be heard by not less than three members of the Judicial Committee, and that they should be conducted with reference to manner and form, subject, however, to the Rules from time to time made by the Judicial Committee, as if appeals in the same causes had been made to the Queen in Chancery, the High Court of Admiralty, or the Lords Commissioners of Appeals in Prize Causes. The 12th section of this Act provided, that all costs, as well of defending any decree or sentence appealed from as of prosecuting any appeal, or in any manner intervening in any cause of appeal, and all costs in the Court below, and the costs of opposing any matter referred to the Judicial Committee, and the costs of all such issues as should be tried by direction of the said Judicial Committee respecting any appeal, should be awarded by the Judicial Committee, and taxed as provided by the 3d and 4th Will. IV. c. 41. The 15th section empowered the Judicial Committee to make rules, orders, and regulations, respecting the practice and mode of proceeding in all appeals, and from time to time to repeal or alter such rules, orders, or regulations; provided always that no such rules, orders, or regulations, should be enforced, until approved of by Her Majesty in Council.

The 7th and 8th Vict. c. 69, was passed in the year 1844, for the purpose of amending the 3d and 4th Will. IV. c. 41, and extending the jurisdiction and powers of the Judicial Committee. This Act made but little alteration as regards Indian appeals; among other things, it enacted that Her

Majesty by Order in Council, might provide for the admission of an appeal from any British Colony or Possession abroad, although there should not be a Court of Error or Appeal in such Colony or Possession, and might amend, alter, or revoke such Orders. By the 9th section of this Act the Judicial Committee were empowered to proceed to the hearing and reporting of appeals, the petition of which should be presented and duly lodged with the Clerk of the Privy Council, without any special order of reference. By the 10th section the Judicial Committee were empowered to require notes of evidence to be taken in the Courts of any Colony, or Foreign Settlement, or Foreign Dominion of the Crown; and the 11th section provided that the Judicial Committee might make rules, to be binding upon such Courts, requiring the Judges' notes of evidence. and of the reasons given by the Judges of such Courts, for or against the judgment pronounced.[1]

Nothing was specially provided in these two last Acts for the regulation of Indian appeals, and all the earlier proceedings were taken according to the 3d & 4th Will. IV. c. 41, and the Order in Council of the 16th April 1838; but when the old appeals had been for the most part heard, it was determined to take the matter out of the hands of the East-India Company, and, in appeals from the Sudder Dewanny Adawluts, admitted by such Courts after the 1st January 1846, to leave the appellants in India to appoint Agents and Counsel in England to conduct their causes. For this purpose the 8th & 9th Vict. c. 30, was passed in 1845, and it is under this Act that appeals are now instituted, reserving of course with regard to their admission and the procedure, such portions of the previous Statutes and orders as are not repealed[2], and relate generally or specifically to appeals from India.

I give this Act verbatim, as it is important and of no great length.

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[1] See *supra*, p. cxxxii, for the Rule promulgated in pursuance of this Act.

[2] The 8th & 9th Vict. c. 30, specially repeals the 22d section of the 3d & 4th Will. IV. c. 41, and, virtually, Rules 4, 5, and 6, of the Order in Council of the 10th April 1838.

"An Act to amend an Act passed in the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for the better Administration of Justice in His Majesty's Privy Council.*

[30th *June* 1845.]

"WHEREAS by an Act passed in the Session held in the third and fourth years of the reign of His late Majesty King *William* the Fourth, intituled *An Act for the better Administration of Justice in His Majesty's Privy Council,* after reciting that various appeals to His Majesty in Council from the Courts of Sudder Dewanny Adawlut at the several Presidencies of *Calcutta, Madras,* and *Bombay,* in the *East Indies,* had been admitted by the said Courts, and the transcripts of the proceedings in appeal had been from time to time transmitted under the seal of the said Courts through the *East-India* Company, then called the United Company of Merchants of *England* trading to the *East Indies,* to the Office of His Majesty's Privy Council, but that the suitors in the causes so appealed had not taken the necessary measures to bring the same to a hearing, it was enacted that it should be lawful for His Majesty in Council to give such directions to the said Company and other persons, for the purpose of bringing to a hearing before the Judicial Committee of the Privy Council the several cases appealed or thereafter to be appealed to His Majesty in Council, from the several Courts of Sudder Dewanny Adawlut in the *East Indies,* and for appointing Agents and Counsel for the different parties in such appeals, and to make such Orders for the security and payment of the costs thereof as His said Majesty in Council should think fit, and thereupon such appeals should be heard and reported on to His Majesty in Council, and should be by His Majesty in Council determined, in the same manner, and the Judgments, Orders, and Decrees of His Majesty in Council thereon should be of the same force and effect, as if the same had been brought to a hearing by the direction of the parties appealing, in the usual course of proceeding: provided always, that such last-mentioned powers should not extend to any appeals from the said Courts of Sudder Dewanny Adawlut, other than appeals in

which no proceedings then had been or should thereafter be taken in *England* on either side for a period of two years subsequent to the admission of the appeal by such Court of Sudder Dewanny Adawlut: And whereas by certain Orders in Council made under certain powers contained in the said Act, provision is made for registering in the Council Office the arrival in this country of the transcripts of the proceedings in appeals from the said Courts: And whereas it is considered advisable that the said Act should be amended in manner hereinafter mentioned: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the hereinbefore recited provisions of the said Act shall not apply to the case of an appeal which shall be admitted by any of the said Courts of Sudder Dewanny Adawlut after the first day of *January* one thousand eight hundred and forty-six.

"II. And be it enacted, that any appeal to be admitted by any of the said Courts of Sudder Dewanny Adawlut after the said first day of *January* one thousand eight hundred and forty-six shall be considered and be held to be abandoned and withdrawn by consent of the parties thereto, unless some proceedings shall be taken in England in the same by one or more of the parties thereto within two years after Registration at the Council Office of the arrival of the transcript; and any such appeal as aforesaid shall be held to be abandoned and withdrawn in like manner under any other circumstances which Her Majesty in Council may from time to time by any Orders or Rules in that behalf direct to be taken and considered as a withdrawal thereof; and the *East-India* Company are hereby required from time to time to ascertain and certify to the proper Courts in the East Indies all appeals which may from time to time become abandoned and dropped under the provisions of this clause."

Under these Statutes and Orders, passed since the establishment of the Judicial Committee by the 3d & 4th Will. IV. c. 41, the ordinary course of proceeding is as follows: the general rules relating to appeals from the Plantations, Colonies,

and Settlements abroad, being applicable to Indian appeals when they are not specially otherwise regulated.[1]

As a matter of course, no appeal will be admitted by the Judicial Committee which does not come within the restrictions of the Statutes and Orders. With regard to the amount in dispute, no consolidation of suits will be allowed; and in one instance, where two suits had been brought for sums due on the same account, each of which was under the legal appealable amount, it was held, in opposition to the opinion of the Sudder Dewanny Adawlut, that such suits could not be consolidated for the purpose of appeal, though the original severance of them was contrary to the plaintiff's instructions, and the aggregate amount exceeded the requisite sum.[2]

On the arrival of the transcript it is to be duly registered in the Privy Council Office; and, by a recent direction of the Judicial Committee, the original transcript is to be deposited in the custody of the Clerk of Appeals in that department, where copies of these documents may be obtained by the Solicitors conducting these appeals, on payment of the stationer's charges for copying. This having been done, the Agent of the appellant has first to prepare and lodge the petition of appeal in the Privy Council Office, and a memorandum of the lodgment will be made by the proper Officer. This petition may be engrossed on paper, and need not be signed either by Counsel or Solicitor, the mere endorsement of the Solicitor's name on the back of the appeal being considered sufficient without any signature. The Solicitor of an appeal before the Judicial Committee cannot be changed without a direct application from the party, or from his Attorney duly authorised.

Although the Courts in India should have admitted a party to appeal in England, *in formâ pauperis*, it seems that the appellant

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[1] For the following account of the procedure I have relied in a great measure upon Mr. Macqueen's valuable work already mentioned, and I here beg to acknowledge the obligation.

[2] *Moofti Mohummud Ubdoollah* v. *Baboo Mootechund*, 1 Moore Ind. App. 363.

ought to make a special application to the Queen in Council for leave to prosecute such appeal *in formâ pauperis.*[1]

The time limited by the 8th and 9th Vict. c. 30 for presenting appeals from the Courts of Sudder Dewanny Adawlut in the Privy Council Office, is, as we have seen, two years from the date of the registration at the Council Office of the arrival of the transcript, after which time, if no proceedings have been taken by any of the parties, the appeal shall be held to be abandoned. Under especial circumstances, however, the Judicial Committee will permit an appeal not entered within the limited period, to be entered, upon a statement by petition to the Queen of the cause of delay, verified by an affidavit; and where an appeal had been dismissed for want of prosecution, no step having been taken in it for ten years, it was restored, upon petition to the King in Council, the appellant paying the costs of dismissal and restoration, it appearing that the appellant was ignorant of the proceedings necessary to be taken in this country, and that, though after a lapse of years, he had instructed a commercial house in Calcutta to prosecute the appeal, but whose agent in England having become insolvent, no proceedings had been taken to bring the case to a hearing.[2]

It seems that according to the Statutes and Orders in Council, when once an appeal from a decision of the Supreme Courts in India has been admitted and transmitted to this country, no lapse of time is sufficient to entitle the respondent to have the appeal dismissed. But if no petition of appeal have been lodged within a year and a day from the date of the judgment of a Supreme Court appealed from, the respondent may move to dismiss the appeal for non-prosecution.

On the respondent appearing to answer, the Clerk of Appeals enters a memorandum of his appearance in the Privy Council Office. Both parties then, supposing the respondent's appearance be voluntary, proceed to prepare printed cases stating their claims, and setting out the circumstances of the case, together with their reasons why the decision of the Court below should be affirmed or reversed. These printed cases

[1] *Munni Ram Awasty* v. *Sheo Churn Awasty*, 4 Moore Ind. App. 114.
[2] *Rajah Deedar Hossein* v. *Ranee Zuhooroonisa*, 2 Moore Ind. App. 441.

are signed by Counsel, and forty copies are required to be lodged under seal in the Privy Council Office. Extra copies are of course required by the Counsel and Solicitors, and for reference.

In all appeals from India it has been usual, and indeed has been found necessary, to print an Appendix containing all the pleadings in the Courts below, together with the evidence and such documents and explanatory matter as are thought requisite for the elucidation of the case. The Appendix should be accompanied by an Index, shewing what papers transmitted to England in the transcript have been printed in the Appendix, and pointing out such as have been omitted as unimportant.

These Appendices are now required to be joint by the following Order in Council, issued by the Judicial Committee on the 3d July 1838:—

"The Lords of the Judicial Committee were this day pleased to order, that all printed cases of appeals lodged at the Council Office which have an Appendix appended, shall be accompanied with a *joint* Appendix of the documents, or other papers referred to in the cases of the parties; and that no party shall be entitled to set down his cause for hearing upon lodging a separate Appendix, unless it be accompanied by an affidavit of the refusal of the opposite party to unite in a joint Appendix."

There is no stipulated time for lodging the printed cases; but it is a rule that the party (whether appellant or respondent) who first deposits his printed case in the Council Office, is entitled to obtain an order requiring his opponent to lodge his printed case within one month from the date of service of the order.

At the end of the month a peremptory order may be obtained, on affidavit of service of the first order and the non-compliance therewith, requiring the delivery of the printed case peremptorily within a fortnight from the service of such peremptory order; and this last order not having been attended to, the party who has lodged his case and obtained and served the peremptory order, may, on application for that purpose, have the cause set down for hearing *ex-parte*. This enables the party obtaining and serving such peremptory order to

be heard *ex-parte* in his turn, according as the appeal is set down in the cause list.

By an Order in Council dated the 23d February 1828, appeals are ordered to take precedence according to the order in which they are ready for hearing, and not according to the order in which the first printed case is lodged upon each appeal.

An appeal having been set down to be heard *ex-parte* does not foreclose the other party, for should he lodge his printed case within a reasonable time before the day appointed for hearing the appeal, he will not be excluded; in the event, however, of his delaying to lodge his printed case so long as to interfere with the proper distribution of the copies among the members of the Court, the hearing will be postponed to the next sitting of the Judicial Committee.

If the printed cases be deposited on both sides within the usual time, the appeal will be set down for hearing: a certain number of copies of the cases are usually exchanged between the Solicitors of the respective parties on either side.

All that has been as yet stated relates to an appeal in which the respondent makes a voluntary appearance; in the event of his not appearing, the Court will issue orders requiring his appearance; but the appellant, to be entitled to such orders, must not only have exhibited his appeal, but also have lodged his printed case. Having done this, he may obtain, on petition, from the Lords of the Judicial Committee, an order of summons requiring the respondent to appear within two months. Personal service of this order on the respondent is not requisite, it is sufficient to affix it on the Royal Exchange and Lloyd's Coffee-house in the City of London.

The time limited by this order having elapsed without the respondent appearing, the appellant, upon affidavit of due publication, will be entitled to a peremptory order requiring peremptorily his appearance within six weeks, which peremptory order must be affixed at the places above mentioned.

If before or at the end of six weeks the respondent appear, the appellant may take out an order requiring him to lodge his printed case within a month; and on his failing so to do, the respondent may then be required by a peremptory order

to put in his case peremptorily within a fortnight, subject to a hearing *ex-parte* in case of default.

Should the respondent not comply with the peremptory order requiring his appearance, the appellant, is entitled on affidavit of publication, to make an application at the end of the time limited by such order, to have the cause set down for hearing *ex-parte.*

The Judicial Committee, however, in a late case, would not hear an appeal *ex-parte,* without evidence that the respondent had been served personally with notice that the appeal was pending, and ordered the appeal to stand over, with leave to the appellant to proceed in the Court below, to render the service of such notice effectual.[1] And in another and more recent case, where no appearance had been entered by the respondent to an appeal, and the appellant was ready to lodge his printed case for hearing, the Judicial Committee, on the application of the appellant, made an order, in the month of July 1846, that the respondent should be served with notice that unless he brought in his case without delay the appeal would be heard *ex-parte,* and gave the appellant liberty to proceed in the Court below to render such service effectual; and the Court was ordered to certify to the Judicial Committee what had been done with respect to the same. The notice was accordingly personally served in India upon the representatives of the respondent, he having died pending the appeal; and no appearance being entered by the respondents, the appeal came on for hearing *ex-parte* in the month of February 1847.[2] But in these cases it must be remarked, that the Court ordered personal service on the respondents of the notice to appear, because it was supposed they might have relied on the appeals being presented for them by the East-India Company.

In the case of an appeal being set down for hearing *ex-parte* for non-appearance, as in that of default being made in lodging the printed cases, the defaulter may be let in on lodging his printed case before the hearing.

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[1] *Konadry Vallabha* v. *Valia Tamburati,* 4 Moore Ind. App. 213 n.

[2] *Wise* v. *Kishenkoomar Bous,* 4 Moore Ind. App. 201.

The cause having been set down in the list, comes on in its turn to be argued by Counsel at the bar of the Judicial Committee; and notice of the day fixed for such hearing is sent to the respective Agents from the Privy Council Office.

Two Counsel only are heard on each side by the Judicial Committee when the appeal is argued; but when there are separate interests, such may be represented by separate Counsel. When cross appeals have been put in, two replies have been heard.

The Report made by the Judicial Committee is the judgment of the whole Court or of the majority; where a difference of opinion arises the sentiments of the minority are not divulged.

When the Lords agree to recommend that the decree appealed from should be varied, or that another decree should be made instead, it is usual to direct the parties to draw up the minutes of the proposed decree on the principles laid down by their Lordships; and these minutes being agreed to and signed by the Counsel or Agents of the parties, are incorporated in the Report of the Committee, and form the basis of the Order in Council which finally decides the appeal.

The reasons on which the Report is founded are always stated at length, and are generally embodied in a written judgment, which is submitted to all the members of the Judicial Committee who have heard the appeal. These reasons, however, though read in the Council Chamber, are not inserted in their Lordships' Report to the Queen.

At the first Council after the Report has been read in Court, it is submitted to the Queen for approval, and an Order is drawn up reciting and approving the Report, and giving judgment accordingly, which the Court below is directed to carry into execution. This Order is afterwards given to the Agent of the successful party.

A decree may be occasionally taken by consent, in which case no argument is necessary; but the Report to the Queen states that the decree is by consent

When costs are awarded they are taxed by the Clerk of Appeals of the Judicial Committee.

An appeal may be sometimes dismissed with costs, on the

ground of irregularity; but on the payment of such costs and amending the irregularity, the party in default may be re-admitted to appeal.

It may occasionally happen that the appellant having duly lodged his petition of appeal in the Privy Council Office, may neglect to deliver in his printed case: in such case the respondent may petition the Queen in Council, praying the dismissal of the appeal with costs. It is said, however, though it has never been established by judicial authority, that the respondent, to have the benefit of such petition, must first deposit his own printed case in the Council Office.

If such petition to dismiss be lodged and the appeal be shortly after presented, both parties are entitled to be heard before the Court; and if the appellant prove to their Lordships a reasonable cause for delay, the appeal will be allowed on payment to the petitioner of the costs of the petition.

When the Court below has refused to admit an appeal to the Queen in Council, the complainant may prefer his petition, and, shewing good cause, may obtain leave to appeal, upon entering into security, *in England*, to prosecute the appeal.

Affidavits are in this instance required, and some statement as regards merits.

If an application for the re-admission of an appeal dismissed for non-prosecution, or for the admission of one refused to be admitted by the Court below, be granted, and no opposition be tendered by the other party at the time, such other party coming in subsequently, and shewing that the Court had been induced so to re-admit or admit such appeal by misrepresentation, the Judicial Committee may recommend the Queen to revoke her order on that ground, or the objection to the right of appeal may be taken at the hearing.

If an appeal be allowed by the Court below, and referred by Her Majesty to the Judicial Committee for adjudication in the ordinary way, their Lordships, though of opinion that there existed no right of appeal, may, if they should think the case fitted for the allowance of a special appeal, and having heard the case on its merits, direct a petition for special leave to appeal to be presented to Her Majesty, and on its being

referred to them, may recommend the allowance thereof, and that the appeal be placed in the same plight and condition as that originally referred to them.[1]

Applications for re-hearings will not be entertained after the Report of the Judicial Committee has been approved by Her Majesty in Council.

The reference to the Queen having once been made, petitions on all interlocutory matters, such as orders for appearance, for cases, for taxation, for payment of costs &c., must be addressed to the Judicial Committee, and not to the Queen in Council, who in such matters proceed by making a Committee Order or Minute, without reporting to Her Majesty.

The expense of an appeal to England of course varies most materially, according to the circumstances of the case, the extent of the proceedings in the lower Courts, and the bulk of the documentary and other evidence. The fees to Counsel are proportionate to the magnitude of the case, but those of Solicitors, and the usual fees in the Privy Council Office, are fixed by an Order in Council.[2]

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[1] *In the matter of Minchin*, 4 Moore Ind. App. 220.

[2] The Order in Council above mentioned is dated the 11th August 1842, and is as follows:—

"WHEREAS there was this day read at the Board a Representation from the Judicial Committee of the Privy Council, dated the 10th August instant, and in the words following: viz.—

'The Lords of the Judicial Committee having taken into consideration the scale on which the costs of appeals, and other matters referred by your Majesty to this Committee, are usually taxed by the Masters of the Court of Queen's Bench, or other persons to whom their Lordships have, from time to time, referred the same, their Lordships agree humbly to represent to your Majesty, that it is expedient that the scale of costs hitherto allowed in the said proceedings before this Committee should be reduced; and their Lordships recommend that, provisionally, and until further consideration, such costs in all appeals or matters, not being appeals from the Courts of Ecclesiastical or Admiralty Jurisdiction, should be taxed and allowed by all such taxing officers as shall hereafter be directed to ascertain and report the same to the Board, according to the Schedule hereunto annexed; and that this rate of charges should be observed by Solicitors conducting business before this Committee.'

V. OF THE LAWS PECULIAR TO INDIA.

The Laws which are peculiar to India are—

1. The Law enacted by the Regulations passed by the Governor-General and Governors in Council previously to the

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"Her Majesty, having taken this representation into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and of what is therein recommended, and to order, as it is hereby ordered, that the same be duly and punctually observed, complied with, and carried into execution. Whereof all persons whom it may concern are to take notice, and govern themselves accordingly.

"C. C. GREVILLE.

I.

"The Schedule of Fees above referred to as allowed to Solicitors conducting business before the Judicial Committee.

	£	s.	d.
Retaining Fee	0	13	4
Perusing official Copy of Proceedings	2	2	0
(This fee to be raised at the discretion of the Clerk of Appeals.*)			
Attendances at the Council Office, or elsewhere, on ordinary business, such as to enter an Appeal or an Appearance, to make a search, to lodge a Petition or Affidavit, or to retain Counsel	0	10	0
Instructions for Petition of Appeal	0	10	0
Drawing Petition or Case, per folio	0	2	0
Drawing Appendix, per folio	0	1	0
Copying, per folio	0	0	6
Drawing small Petitions for Orders, &c.	0	10	0
Instructions for Case	1	0	0
Attending Consultation	1	0	0
Correcting Proof Sheets, per printed sheet	0	10	6
Correcting Foreign or Indian Proof Sheets, per printed sheet	1	1	0
Attending at Council Chamber on a Petition	1	6	8
Attending Council Chamber all day on an Appeal not called on,	2		8
Attending a Hearing	3	6	8*
Attending a Judgment	1	6	8
Sessions Fee (for the legal year) equal to four term fees	3	3	0
Attending Taxation	2	2	0
Attending at Council Office on Committee Report, and on the drawing up of Minutes	1	1	0

* This Fee has commonly been allowed at the rate of 6s. 8*d.* for the perusal of three brief sheets, or twenty-five folios.

3d and 4th Will. IV. c. 85, and the Acts of the Legislative Council of India passed subsequently to that Statute. This Law is the existing general law of all the British territories in India, excepting such portions as are subject to the jurisdiction of the Supreme Courts, and is administered in the Courts of the Honourable East-India Company, both to Natives and Europeans; British subjects being, however, excepted so far as relates to the criminal law. The Supreme Courts also take judicial notice of such of the Regulations as have been registered in such Courts, and alter the Common Law of England, together with such Acts of Government as alter the same Law, or are specially applicable to the same Courts, or to matters within their jurisdiction.[1]

II.

"*Table of Council Office Fees on Appeals and Petitions to the Queen in Council.*

	£	s.	d.
Lodging Petition of Appeal	1	1	0
Entering	1	1	0
Lodging Case	1	1	0
Entering Appearance	0	10	0
Setting down Case	0	10	0
Summons	0	10	0
Committee Report	1	10	0
Order of Her Majesty in Council	3	2	6
Committee Order	1	12	6
Lodging Affidavit	1	1	0
Ditto Petition	1	1	0
Setting down Motion	1	1	0
Notice to put off	0	10	0
Ditto to attend	0	10	0
Searching Books for information for Parties	0	10	0
Certificate delivered to Parties	0	10	0
Copies of Papers (each side)	0	5	0
Committee References	2	2	0
Lodging Caveat	1	1	0
Subpœna to Witnesses	0	10	0
Fee for Taxation (Appeals)	3	3	0
Ditto ditto (Petitions)	1	1	0"

[1] *The Queen* v. *Ogilvy*, 1 Fulton, 364. *Woodubchunder Mullick* v. *Braddon*, ib. 402.

2. The Native Laws. These may be divided into:—

(1.) The Hindú Civil Law so far as the same is reserved to the Hindú inhabitants of India, by the Statutes, Charters, and Regulations. This law is administered both in the Supreme Courts, and in those of the Honourable East-India Company.

(2.) The Muhammadan Civil Law as reserved by the same Statutes, Charters, and Regulations, which is administered to Muhammadan inhabitants of India in both the Queen's Courts and the Sudder and Mofussil Courts; and the Muhammadan Criminal Law, which is administered, under certain restrictions, in the Company's Courts of Criminal Judicature in the Presidencies of Bengal and Madras, but has been superseded by a written code in the Criminal Courts of the Bombay Presidency.

(3.) The Laws and Customs of those Natives of India who are neither Hindús nor Muhammadans. These laws and customs so far as they can be ascertained, are administered in some civil matters in the Sudder and Mofussil Courts, in suits between such native parties, by a liberal construction of the wording of the Regulations.

1. The law enacted by the Regulations and Acts of the Legislative Council of India.

Sir James Mackintosh says, "There is but one way of forming a civil code, either consistent with common sense, or that has been ever practised in any country; namely, that of gradually building up the law, in proportion as the facts arise which it is to regulate."[1] This remark is especially applicable to British India, where it would at any time have been utterly impossible at once to have formed or adapted a code which would have been suited to its requirements.

From the date of the battle of Plassey in 1757, down to the subjugation of the Panjáb in our own times, new provinces and new nations have constantly and successively been brought

[1] Discourse on the Study of the Law of Nature and Nations.

under British rule, either by cession or conquest. They have been found to possess different laws and customs, and distinct and various rights of property; and they have consequently presented new facts requiring the introduction of fresh laws into our Codes for their government. These fresh laws were in many instances rendered inapplicable by the gradual introduction of civilization and the amelioration of the condition of the natives, and they were in such cases abolished accordingly; and this is one of the principal causes why the Codes of Regulation Law seem, at first sight, to be an incongruous and indigested mass.

The apparent defects of the Regulation Law will, however, in a great measure disappear on a closer examination; and, if we except some sweeping enactments of the earlier Indian legislators, who cut the Gordian knot instead of solving the riddle, the Regulations will be found to have been formed, modified, and abrogated, according to the peculiar circumstances of time and place, with an ability and moderation which reflects equal honour on the lawgivers themselves and the country which gave them birth.

The gradual building up of the law which has taken place in India, together with the variety of rights to be provided for, the diversity of the people to be governed, and of the laws to be administered, has unavoidably rendered the study of the Regulations both intricate and difficult; and on this account some hasty and thoughtless persons have been induced to pass an indiscriminate censure upon a system which they, possibly, wanted time or industry to acquire, or capacity to understand. It is nowhere pretended that the Codes enacted by the Governments of India are perfect; but the candid inquirer will pause and examine before he condemns them for obscurity or insufficiency, and will rather admire how, under such a complication of difficulties, a system of laws could have been formed providing so admirably for contingencies which apparently no human forethought could have anticipated, that has worked so well in practice, and that has resulted in the prosperity and good government so eminently conspicuous throughout the vast territories of our Indian Empire.

Many years ago that great statesman the Marquis of Wellesley spoke of the code of Bengal Regulations, upon which

those of Madras and Bombay are based, in the following words:—"Subject to the common imperfection of every human institution, this system of laws is approved by practical experience, (the surest test of human legislation,) and contains an active principle of continual revision, which affords the best security for progressive amendment. It is not the effusion of vain theory, issuing from speculative principles, and directed to visionary objects of impracticable perfection; but the solid work of plain, deliberate, practical benevolence; the legitimate offspring of genuine wisdom and pure virtue. The excellence of the general spirit of these laws is attested by the noblest proof of just, wise, and honest government; by the restoration of happiness, tranquillity, and security, to an oppressed and suffering people; and by the revival of agriculture, commerce, manufacture, and general opulence, in a declining and impoverished country."[1]

This is high praise. It is true that it was bestowed comparatively but a few years after the foundation of the Bengal Code by Lord Cornwallis; but an opinion from so great an authority must always command our respect; and it has been fully justified by a lengthened application of the test alluded to by the noble orator: practical experience has shewn us that the system was well conceived and well applied: through a long series of years it has been marked by progressive improvements; and British India exhibits at the present day, though on a far grander scale, the same prosperous results that called forth Lord Wellesley's admiration nearly half a century ago.

I shall now give a short statement of the Statutes under which the Regulation law generally, was founded and formed.

Until the year 1793 no general Code of Regulations was enacted for the government of India, though long previously to that time, and as early as 1772, when Warren Hastings was appointed Governor of Bengal, many rules and orders had been made by the Government of that Presidency.

[1] Discourse delivered by the Marquis of Wellesley on the 11th February 1805, at the annual meeting for the distribution of prizes to the students of the College at Fort William.

The Regulating Act, the 13th Geo. III. c. 63, which was passed in 1773, first laid down specific laws for the Government of Indian affairs, and for the appointment of a Governor-General and Council. Sections 36 and 37 of that Statute empowered the said Governor-General and Council to make and issue such Rules, Ordinances, and Regulations, for the good order and civil government of the United Company's Settlement at Fort William in Bengal, and all places subordinate thereto, as should be deemed just and reasonable, and not repugnant to the laws of the realm; and to enforce them by reasonable fines and forfeitures: with a proviso, however, that such Regulations should not be valid unless registered in the Supreme Court of Judicature to be established under the said Statute.

An appeal lay from these Regulations to the King in Council; and even without an appeal His Majesty was empowered to set them aside by his sign manual.

By a subsequent Statute, the 21st Geo. III. c. 70, s. 23, passed in 1781, the Governor-General and Council were empowered to frame Regulations for the Provincial Courts and Councils, subject to revision by the executive Government of England.

Several Regulations were accordingly passed, under the authority of these Statutes, for the administration of justice and the collection of the revenue; the first receiving the sanction of the Bengal Government on the 17th of April 1780. Many of these, however, existed only in manuscript; and although others were printed, and some translated into the native languages, still these were chiefly on detached papers not easy of reference even to the officers of Government, and of course difficult to be obtained in a collected form; whilst such as were not translated into the languages of the country were quite inaccessible to the natives.

The present systems of Regulation law which are now current throughout India may be said to owe their origin to the political wisdom of the Marquis Cornwallis, during whose first government[1] was passed the celebrated Regulation XLI. of

[1] The Members of the Bengal Council at this period deserve to be honourably recorded; these were Peter Speke, Esq., William Cowper, Esq., and Thomas Graham, Esq.

1793[1], entitled, "A Regulation for forming into a regular Code all Regulations that may be enacted for the Internal Government of the British Territories in Bengal." The preamble to this Regulation states, that "It is essential to the future prosperity of the British territories in Bengal, that all Regulations which may be passed by Government, affecting in any respect the rights, persons, or property of their subjects, should be formed into a regular Code, and printed, with translations in the country languages; that the grounds on which each Regulation may be enacted should be prefixed to it; and that the Courts of Justice should be bound to regulate their decisions by the rules and ordinances which those Regulations may contain. A Code of Regulations framed upon the above principles, will enable individuals to render themselves acquainted with the laws upon which the security of the many inestimable privileges and immunities granted to them by the British Government depends, and the mode of obtaining speedy redress against every infringement of them; the Courts of Justice will be able to apply the Regulations according to their intent and import; future administrations will have the means of judging how far Regulations have been productive of the desired effect, and, when necessary, to modify or alter them as from experience may be found advisable; new Regulations will not be made, nor those which may exist be repealed, without due deliberation; and the causes of the future decline or prosperity of these provinces will always be traceable in the Code to their source."

The tenour, and for the most part the very terms of this important Regulation, were afterwards adopted into a Statute, which was passed in 1797, confirming the power of making local laws already vested in the Governor-General in Council. This Statute, the 37th Geo. III. c. 142, by section 8 enacted that all Regulations which should be issued and framed by the Governor-General in Council at Fort William in Bengal, affecting the rights, persons, or property of the

[1] Extended to Benares by Beng. Reg. I. 1795, s. 4, and re-enacted for the ceded and conquered provinces by Beng. Reg. I. 1803, and Beng. Reg. VIII. 1805, s 2.

natives, or of any other individuals who might be amenable to the Provincial Courts of Justice, should be registered in the Judicial Department, and formed into a regular Code, and printed, with translations in the country languages; and that the grounds of each Regulation should be prefixed to it; and all the Provincial Courts of Judicature should be bound by, and regulate their decisions by, such rules and ordinances as should be contained in the said Regulations. The same section also enacted, that the said Governor-General in Council should annually transmit to the Court of Directors of the East-India Company ten copies of such Regulations as might be passed in each year, and the same number to the Board of Commissioners for the Affairs of India.

The 18th and 19th sections of the 39th & 40th Geo. III. c. 79, passed in 1800, empowered the Governor-General and Council to order corporal punishment for breach of the Rules and Regulations made under the 13th Geo. III. c. 63; and the 20th section of the same Statute rendered the Province of Benares, and all provinces or districts thereafter to be annexed or made subject to the Bengal Presidency, subject to such Regulations as the Governor-General and Council of Fort William had framed or might thereafter frame.

At Madras, Regulations were made under the authority of the 39th & 40th Geo. III. c. 79, the 11th section empowering the Governor in Council at Fort St. George to frame Regulations for the Provincial Courts and Councils at that Presidency; and Regulation I. of 1802, ordering the formation of a regular Code according to the plan adopted in Bengal, was framed upon the Bengal Regulation XLI. of 1793.

The right of the Bombay Government to make Regulations had been held to stand inferred from, and to be recognized by, the 11th section of the 37th Geo. III. c. 142[1]; but it was more formally conferred by the 47th Geo. III. sess. 2, c. 68, s. 3, passed in 1807. Under the inference above mentioned, and by the recommendation of the Governor-General and Council, Regulations were made at Bombay, commencing in

[1] Bomb. Reg. III. 1799; Bomb. Reg. II. 1808.

the year 1799; Regulation I. of which year provided for the formation of a Code, and was taken with but little alteration from Regulation XLI. of the Bengal Code.

Section I. of the 47th Geo. III. sess. 2, c. 68, empowered the Governors in Council to make Regulations for the good order and government of the towns of Madras, Bombay, and their dependencies.

The 53d Geo. III. c. 155, s. 66, enacted that copies of all Regulations made under the 37th Geo. III. c. 142; the 39th & 40th Geo. III. c. 79; and the 47th Geo. III. sess. 2, c. 68, should be laid annually before Parliament; and sections 98, 99, 100, empowered the Governor-General and Governors in Council, in their respective Presidencies, with the sanction of the Court of Directors and the Board of Controul, to impose duties and taxes within the towns of Calcutta, Madras, and Bombay; for the enforcing of which taxes Regulations were to be made by the Governor-General and Governors in Council in the same manner as other Regulations were made; and all such Regulations were directed to be taken notice of, without being specially pleaded, in His Majesty's Courts at Calcutta, Madras, and Bombay; and all persons were empowered to proceed in such Courts for the enforcement of such Regulations.

The powers given by the above Statutes are not very well defined. To use the words of Sir Charles Grey, C. J.—"The exercise of one of them has been extensive beyond what seems to have been at first foreseen by the Legislature; and it is not that which in 1773 was designed to be the only one, which has in fact been the most considerable. That which was established by the 13th Geo. III. c. 63 has been almost a barren branch; and that which was given in 1781, expressly for the purpose of making limited rules of practice for Provincial Courts, has produced a new and extensive system of Laws, for a large portion of the human race."[1]

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[1] See Minute of Sir C. Grey, C. J., dated the 2d October 1829. Fifth App. to the Third Report from the Select Committee of the House of Commons, 1831, p. 1126, 4to edit. And see Sir E. Ryan's Minute of the same date, ib. p. 1183.

With regard to the translations of the Regulations into the country languages, the principle of which was actually opposed in sober seriousness by the notorious Francis, in his recommendation to *oblige* the natives of India to *learn English*[1], it would be unnecessary to point out the wisdom or utility. Justinian himself published in Greek because it was the most generally understood language.[2] No reasonable person will refuse to admit the absolute necessity of such translations, previously to the enforcement of the laws which were framed for the government of the natives in the earlier stages of our administration, whatever may be the case at the present time.

According to the provisions above recapitulated, Regulations were successively enacted at the three Presidencies of Bengal, Madras, and Bombay, from the years 1780, 1802, and 1799 respectively.

These Regulations, where not repealed, are still in force, and form three separate Codes; First, that of Bengal, commencing in 1793; Secondly, that of Madras, first formed in 1802, before which time no Regulations were passed in that Presidency; and Thirdly, the Bombay Code, which dates its origin, as it now stands, from the year 1827, when all the previous Regulations passed for the Bombay Presidency, from 1799 up to that period, were rescinded, and the present Code originated. Since the month of August in the year 1834, when Regulation II. of the Madras Code of that year received the sanction of the Governor-General in Council, no further Regulations were passed, their place being supplied by the Acts of the Legislative Council of India, under the requirements of the 3d & 4th Will. IV. c. 85: these Acts apply to the whole of the British territories in India, unless otherwise specified. It must, however, be remembered that they do not supersede or abolish the old Codes of law, except

[1] "Every man then would be able to speak for himself, and every complaint would be understood."—Letter to Lord North. p. 49. London, 1793.

[2] "Nostra constitutio quam pro omne natione *Græca* lingua composuimus."—Instit. lib. III. tit. viii. 3.

in specified instances, and that they are expressly passed *in continuation* of the Regulations of the Supreme Government.

By the 39th section of the 3d & 4th Will. IV. c. 85, the superintendence, direction, and controul, of the whole civil and military Government of the British territories and revenues in India became vested in the Governor-General and Councillors, to be styled "the Governor-General of India in Council;" and by the next following section it was provided that the said Council should consist of four ordinary members, instead of three as formerly; and that of such four, three should be, or have been, servants of, or appointed by, the East-India Company; and that the fourth should be appointed, from amongst persons who should not be servants of the said Company, by the Court of Directors, subject to the approbation of His Majesty; and that such member should not sit or vote in the said Council, except at meetings thereof for making Laws and Regulations.[1] The 43d section of the same Statute empowered the said Governor-General in Council to legislate for India, by repealing, amending, or altering, former or future Laws and Regulations, and by making Laws and Regulations "for all persons, whether British or Native, foreigners or others, and for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever, within and throughout the whole and every part of the British territories in India, and for all servants of the said Company within the dominions of Princes and States in alliance with the said Company." The next section enacted that such Laws and Regulations should be repealed, if disallowed by the Court of Directors at home. The 45th section provided, that until such Laws should be repealed by the home

[1] Professor Wilson very justly remarks, with reference to this section of the Statute—"It might be doubted whether the association of the Chief Justice, as a legal member of the Council, would not have more effectively and economically answered the purpose, than the special appointment of an individual from England, unfamiliar with the law or the practice of the Indian Courts, and recommended by no remarkable forensic qualifications." —History of British India from 1805 to 1835. Vol. IX. p. 564.

authorities, they should be operative; so that Laws for taxation no longer require the previous sanction of the Court of Directors. It was also declared by the last-mentioned section, that such Laws and Regulations should have the force of Acts of Parliament, and that their registration and publication in any Court of Justice should be unnecessary. By the 51st section it was enacted that nothing in the said Statute should affect the right of Parliament to legislate for India; and all Laws and Regulations made by the Legislative Council were required to be transmitted to England, and laid before both Houses of Parliament.

The restriction of the legislative power to a Council at the chief Presidency is undoubtedly a great improvement on the former plan, inasmuch as it secures uniformity in the system of legislation, and renders unnecessary the constant re-enactment of different Laws at the several Presidencies, when such Laws are applicable to the whole of British India. The principle which governs the present system is, however, essentially the same that has prevailed throughout the formation of the three Codes of Regulations.

A further alteration was made in the legislative system of India by the 53d section of the last-mentioned Statute; and as it is connected in a great measure with the Acts of the Legislative Council, it may properly be noticed in this place. This section enacted, that a Law Commission should be appointed by the Governor-General in Council to inquire into the jurisdiction, powers, and rules, of the existing Courts of Justice and Police establishments, and into the nature and operation of all Laws prevailing in any part of the British territories in India; and to make reports thereon, and suggest alterations, due regard being had to the distinction of casts, difference of religion, and the manners and opinions prevailing among different races and in different parts of the said territories.

Upon these inquiries, reports, and suggestions, the Acts of the Legislative Council of India have been in many instances based; and there is no doubt but that, if fully carried out, no plan could well have been devised more suited to prepare the way for salutary reform, and to lighten the labour of the legislative department of Government. The Reports of the

Indian-Law Commissioners are printed periodically, by order of the House of Commons, and fill several large folio volumes; their perusal will, however, amply repay the student for the trouble of wading through some thousands of pages, since they comprise numerous communications from the most learned and experienced persons in India in every department, embodying their opinions on many topics of the highest interest, which probably would otherwise never have been recorded. These Reports, of necessity, offer all the inconveniences attendant upon the textual reproduction of official correspondence; but the recent appearance of a comprehensive Index, published by order of the House of Commons, has obviated, in a great measure, the difficulty of reference.

In conclusion of the present division of this section, I shall enumerate those works which tend to facilitate the study of the Law enacted by the Regulations and the Acts of the Legislative Council; the unrepealed Regulations of the three Presidencies remaining in force, as has been already mentioned, within the limits of the respective Presidencies, and forming, together with the Acts of the Legislative Council, the general subsisting Law throughout the British territories in India.

The Regulations themselves have been published at different times, and in various forms, both in India and in this country; those passed at each Presidency having been printed separately, by order of the Governments in India or of the Honourable Court of Directors. From the year 1814, the Regulations of all the three Presidencies, passed in, and subsequently to, that year, appeared concurrently, printed by order of the House of Commons. Various translations of the Regulations in the native languages were from time to time published by order of the Governments in India, but these it will be unnecessary in this place to mention more particularly.

In 1807 Sir James E. Colebrooke published a Digest of the Civil Regulations of the Presidency of Bengal from the years 1793 to 1806, in two folio volumes, together with a Supplement forming a third volume.

In 1807—1809 appeared the admirable analysis of the

Bengal Regulations by Mr. John Herbert Harington, formerly Chief Judge of the Sudder Dewanny Adawlut at Calcutta; and in the year 1821 a second edition of the first volume, comprising the first and second parts of the work, and enriched with copious Notes and additions, was published in London under the patronage of the Court of Directors. It is scarcely possible to speak too highly of this analysis, and it justly occupies the very first place as an authority. The arrangement throughout the work is clear and simple, and the Notes which are added afford, in every instance, the greatest assistance to the student in the elucidation of the subject-matter of the text. In no instance, probably, has the patronage of the East-India Company been more worthily bestowed than upon Mr. Harington's work; and it is only to be regretted that the second and revised edition of the two latter volumes was never published. Imperfect though it be, however, and though it extends no later than the year 1821, no one who is desirous of obtaining a knowledge of the law of Bengal should omit to peruse it with the utmost attention. A Persian translation of Mr. Harington's analysis was made by Major Ouseley, and published at Calcutta in the year 1840[1]: it is a most useful publication so far as it goes, as it affords to those natives who are ignorant of our language the means of gaining a perfect insight into the history and constitution of our system of legislation for India, and a knowledge of a large body of the Laws themselves.

An Abstract of the Regulations enacted for the Provinces of Bengal, Behar, and Orissa, in four 4to. volumes, originally compiled by Mr. Blunt, and continued by Mr. H. Shakespear, was printed at Calcutta in 1824—1828.

Mr. Dale's Alphabetical Index to the Regulations of Government for the territories under the Presidency of Bengal was published, with an Appendix, in 1830: it is a useful work, but has been superseded by Mr. Fenwick's more recent publication of the same nature, mentioned below.

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[1] كتاب ذخيرة العمل، ترجمه ميجر جوسف اوزلي. 2 Vols. 4to. Calcutta, 1840.

Mr. Richard Clarke is the author of a concise Abstract of the Bengal Regulations from 1793 to 1831, which forms the sixth Appendix to the Minutes of Evidence taken before the Judicial Sub-Committee of the House of Commons in the year 1832. The same gentleman also published, in 1840, a collection of the Bengal Regulations respecting Zamíndárí and Lákhiráj property. This collection, which was printed by the authority of the Honourable Court of Directors, is of the highest interest, as it brings together, arranged under separate heads, such of the enactments of the Bengal Government as affect the possession and transfer of revenue property, or, as it is ordinarily termed in the Regulations which established the permanent settlement, property in land. Mr. Clarke published the present work chiefly for reference upon appeals to the Queen in Council, the right to Zamíndárí property forming the subject of many of the most important appeals from the Courts of the East-India Company, especially those from Bengal.

An Abstract of the Bengal Civil Regulations was published by Mr. Augustus Prinsep. I have never met with a copy of this work, but it is stated to be a very valuable and well-executed compilation.[1] A Hindí translation of Mr. Prinsep's Abstract was published at Dehli in 1843.[2]

In the year 1840 Mr. Marshman produced his Guide to the Civil Law of the Presidency of Fort William, which contains all the unrepealed Regulations, Acts, Constructions, and Circular Orders of Government relating to the subject. This is a most useful and comprehensive work, but it is to be regretted that it has not the advantage of an Index. A Hindí translation of this work, by the Professors of the Dehli College, was published in 1843, comprising all the Regulations, abstracts of Constructions, and Circular Government Orders, contained in Mr. Marshman's work, and continued to November 1843; abstracts of some of the Acts of the Legislative

[1] Shore on Indian affairs, Vol. I. p. 224.

[2] خلاصة قوانين ديواني Abstract of the Civil Law, by A. Prinsep, Esq., continued from 1828 to March 1843, translated by Moonshee Hosseinee. 4to. Dehli, 1843.

Council, and of the Regulations relative to the resumption of rent-free tenures; together with an Epitome of the Hindú and Muhammadan Laws, from the works of Sir W. H. Macnaghten.[1] Mr. Marshman also published a Guide to the Revenue Regulations in the year 1835.

Mr. Fulwar Skipwith's Magistrates' Guide, which is an abridgement of the Criminal Regulations and Acts, and contains the Circular Orders and Constructions of the Court of Nizamut Adawlut in Bengal up to August 1843, is a most useful book in the criminal department.

In the year 1840 Mr. A. D. Campbell published at Madras a collection of the Regulations of the Madras Presidency from the year 1802, with a Synopsis and Notes on the Code, and mentioning all those Regulations that have been partially or wholly rescinded. This collection was republished in 1843, together with an enlarged Synopsis and a copious Index.

A Digest of the Criminal Law of the Presidency of Fort William, by Mr. Beaufort, of the Bengal Civil Service, was published at Calcutta in the year 1846: it is spoken of in the highest terms by several writers, but I have not been able to discover any copy of it in this country.

In the year 1848 Mr. Baynes, the Civil and Sessions Judge of Madura, published a treatise on the Criminal Law of the Madras Presidency, as contained in the existing Regulations and Acts. This work is preceded by a concise tabular statement of crimes and punishments; and contains, in addition, the Circular Orders of the Foujdary Adawlut from 1805 to February 1848.

Mr. Richard Clarke, whose works on the Regulation Law have been already mentioned, published, in 1848, an edition in 4to. of the Regulations of the Government of Fort St. George, in force at the end of the year 1847, together with the Acts of Government in force at that Presidency. In this edition Mr. Clarke has omitted all enactments which are no longer in

[1] كليات قوانين ديواني Guide to the Civil Law of Bengal and the Upper Provinces, 4to. Dehli, 1843.

operation, "except in a very few instances, where a section or clause, though rescinded or superseded, has been referred to in a subsequent Regulation, or where a provision in force during a certain period might occasionally require to be consulted in order to establish the admissibility of evidence."[1] Mr. Clarke has added a classified list of Titles, and a copious Index. This edition of the Madras Regulations, which is published by the authority of the Honourable Court of Directors, will be followed by new editions of the Regulations and Acts in force at the other Presidencies; and the entire work, when completed, will offer an uniform and compact edition of the whole body of the Laws enacted in India. The addition of the Indices, so generally wanting, or imperfect, in former editions, will render easy of access, in a commodious form, the contents of a number of bulky volumes, many of which are not easily to be procured. Mr. Clarke is entitled to the best thanks of the Indian community for his useful and important labours: the difficulties of the task, and the utility of the result, can only be appreciated by those whose duty or inclination has led them to study the Regulation Law of India.

In 1849 Mr. Fenwick published, at Calcutta, an Index to the Civil Law of the Presidency of Fort William, from 1793 to 1849 inclusive: it is formed on the plan of Dale's Index, already mentioned, which it may be said to have superseded.

The latest work on the Regulation Law is an Edition in 8vo. of the Code of Bombay Regulations, published in London in 1849, by Mr. Harrison of the Bombay Civil Service: the Editor has added Notes shewing the alterations made by the enactments subsequent to 1827, together with a number of valuable Interpretations, and an Epitome of the Acts of Government: he has also given a very full Index. The arrangement of Mr. Harrison's work renders it peculiarly convenient of reference. He has retained the original division of the Code into five branches, and has entered the Supplements to each Regulation immediately after it; so that the

[1] See Clarke's Madras Regulations—Prefatory Note.

whole Bombay Law on any given subject, as it now stands, is presented to the reader in a connected form.

The Acts of the Legislative Council of India are printed in India so soon as they are passed, and every publicity is given to them: they are also printed in England by order of the House of Commons.

Mr. Theobald has published at Calcutta a collection of the Acts of the Legislative Council of India, together with an Analytical Abstract prefixed to each Act, and copious Indices. This collection first appeared in 1844, and the learned Editor has since continued his work, which now comprises all the Acts from 1834 to the end of the year 1848.

Mr. Clarke's edition of the Regulations, as has already been stated, will contain the Acts in force in the respective Presidencies.

2. Native Laws.

The earliest trace which we find of the reservation to the natives resident in our territories in India of their own laws and customs is in the Charter of George II., granted in 1753, in which there was introduced an express exception from the jurisdiction of the Mayors' Courts of all suits and actions between the Indian natives only, such suits and actions being directed to be determined among themselves, unless both parties should submit the same to the determination of the Mayors' Courts. This, however, was merely an *exception* to the jurisdiction; nor indeed does it appear that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the Mayors' Court, or that any peculiar Laws were administered to them in that Court.[1]

In Warren Hastings' celebrated plan for the administration of justice, proposed and adopted in 1772, when the East-India Company first took upon themselves the entire management of their territories in India, the 23d Rule especially reserved their own laws to the natives, and provided that "Moulavies

[1] See Vol. II. of this work, p. 343.

or Brahmins" should respectively attend the Courts, to expound the law, and assist in passing the decree.

Subsequently, when the Governor-General and Council were invested by Parliament with the power of making Regulations, the provisions and exact words of the 23d Rule above mentioned were introduced into the first Regulation enacted by the Bengal Government for the administration of justice. This Regulation was passed on the 17th of April 1780.

By section 27 of this Regulation it was enacted, "That in all suits regarding inheritance, marriage, and caste, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to." This section was re-enacted in the following year, in the revised Code, with the addition of the word "succession."[1]

In the Statute Law relating to India no such express privilege was granted until the year 1781; the 13th Geo. III. c. 63, passed in 1773, which established the Supreme Court at Fort William, and the Charter of Justice of that Court, containing no clause specially denoting the law to be administered to the natives.

In the former year, however, the declaratory Act of the 21st Geo. III. c. 70, which was passed for explaining and defining the powers and jurisdiction of the Supreme Court at Fort William in Bengal, expressly enacted, by section 17, that, in disputes between the native inhabitants of Calcutta, "their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of Gentûs by the laws and usages of Gentûs; and where only one of the parties shall be a Mahomedan or Gentû, by the laws and usages of the defendant." Section 18 of the same Statute emphatically preserved to the natives their laws and customs, enacting that, "in order that regard should be had to the civil and religious usages of the said natives, the rights and

[1] Beng. Jud. Reg. VI. 1781, s. 37.

authorities of fathers of families and masters of families, according as the same might have been exercised by the Gentû or Mahomedan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the rule and law of caste, respecting the members of the said families only, be held and adjudged a crime, although the same may not be held justifiable by the laws of England." The next following section provided that the said Court might frame such process, and make such Rules and Orders for the execution thereof in suits Civil or Criminal against the natives of Bengal, Behar, and Orissa, as might accommodate the same to the religion and manners of such natives, so far as the same might consist with the due execution of the laws and the attainment of justice.

This reservation of the native laws to Hindús and Muhammadans was extended to Madras and Bombay by sections 12 and 13 of the 37th Geo. III. c. 142, passed in 1797, under which Statute the Recorders' Courts at those Presidencies were established. Section 12 of this Statute re-enacted the 18th section of the 21st Geo. III. c. 70; and section 13 repeated *verbatim* the 17th section of the same Statute already quoted, with the addition, however, of "or by such laws and usages as the same would have been determined by if the suit had been brought and the action commenced in a native Court; and where one of the parties shall be a Mahomedan or Gentoo, by the laws and usages of the defendant: and in all suits so to be determined by the laws and usages of the natives, the said Courts shall make such rules and orders for the conduct of the same, and frame such process for the execution of their judgments, sentences, or decrees, as shall be most consonant to the religions and manners of the said natives, and to the said laws and usages respectively, and the easy attainment of the ends of justice; and such means shall be adopted for compelling the appearance of witnesses, and taking their examination, as shall be consistent with the said laws and usages, so that the suits shall be conducted with as much ease, and at as little expense, as is consistent with the attainment of substantial justice."

By the 39th & 40th Geo. III. c. 79, s. 5, and the 4th Geo.

IV. c. 71, s. 9, all powers and authorities granted to the said Recorders' Courts at Madras and Bombay were transferred to the Supreme Courts at those Presidencies to be established respectively under the said Statutes. The 22d section of the Charter of Justice of the Supreme Court at Madras, and the 29th section of the Charter of Justice of the Supreme Court at Bombay, contain the 13th section of the 37th Geo. III. c. 142, nearly word for word, and without any material addition or alteration.

Such is the Statute Law relating to this subject, and applying to the Supreme Courts of Judicature, and those natives within their jurisdiction. Of the Regulations passed for the direction of the Courts of the Honourable East-India Company, the first, as taking the lead in the enactment of this wise and just measure, has been already noticed. In 1793, section 15 of Regulation IV. of the Bengal Code enacted, that "in suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered as the general rules by which the Judges are to form their decision." This section was extended to Benares and the Upper Provinces by section 3 of Regulation VIII. of 1795, and section 16 of Regulation III. of 1803 of the Bengal Code. The former of these last-mentioned Regulations by section 3, also enacted, in addition to the provisions of section 15 of Reg. IV. of 1793, that "in causes in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter; excepting where Europeans, or other persons, not being either Mahomedans or Hindoos, shall be defendants, in which cases the law of the plaintiff is to be made the rule of decision in all plaints and actions of a civil nature."

In the year 1831 Moonsiffs generally throughout Bengal were directed to administer the Muhammadan laws with respect to Muhammadans, and the Hindú laws with regard to Hindús, in all cases of inheritance of, or succession to, landed property, and the law administered in such cases was to be the law of the defendant: where any doubts existed, they were

enjoined to obtain an exposition of the law from the Law-officers of the Zillah Courts.[1]

In the year 1832 a Regulation was passed for the Bengal Presidency, entitled, "A Regulation for modifying certain of the provisions of Regulation V. 1831, and for providing supplementary rules to that enactment." This Regulation[2] attracted but little notice at the time, partly by reason of its title, and partly because it was principally devoted to the enactment of rules for appeals, pleadings, and the practice of the Courts: a most important innovation upon the rights of the natives was, however, unobservedly introduced. The 8th section of this Regulation rescinded the portion of section 3 of Regulation VIII. of 1795 above quoted, and enacted that the rules contained in section 15 of Regulation IV. of 1793, and section 16 of Regulation III. of 1803, should be "the rule of guidance in all suits regarding succession, inheritance, marriage, and cast, and all religious usages and institutions that may arise between persons professing the Hindoo and Mahomedan persuasions respectively." The 9th section proceeded to declare "that the above rules are intended, and shall be held to apply to such persons only as shall be *bonâ fide* professors of those religions at the time of the application of the Law to the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Whenever, therefore, in any civil suit, the parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahomedan persuasion, or where one or more of the parties to such suit shall not be either of the Mahomedan or Hindoo persuasion, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the intro-

[1] Beng. Reg. V. 1831, s. 6.

[2] Beng. Reg. VII. 1832.

duction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

This innovation was confined to the Bengal Presidency, and did not excite much attention until a later period, being, as it were, smuggled into an enactment relating to the technicalities of practice, and being, moreover, very obscure in its wording.

When Courts of Judicature were first established by the East-India Company in the Madras Presidency, in the year 1802, Regulation III. of the new Code was formed on the Bengal Reg. IV. of 1793, nearly the same words being used with regard to the reservation of the Hindú and Muhammadan laws as those employed in the latter Regulation.

In the Bombay Presidency, in the year 1799, the Governor and Council also passed a Regulation to the like effect, but more explicit and extensive in its application. This Regulation, the fourth of the above year, by its fourteenth section, secured to Hindú and Muhammadan defendants the benefit of their own laws in civil suits respecting "the succession to, and inheritance of, landed and other property, mortgages, loans, bonds, securities, hire, wages, marriage, and cast, and every other claim to personal or real right and property, so far as shall depend upon the point of law." It also provided that, in the case of Portuguese and Pársí inhabitants, the Judge was to be guided by a view to equity in his decisions, making due allowance for their respective customs, as far as he could ascertain the same. Regulation II. of 1800 re-enacted the same provisions.

In 1827, when all the Judicial Regulations previously passed by the Bombay Government were rescinded, it was enacted that "the law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and, in the absence of specific law and usage, justice, equity, and good conscience alone."[1] Hindú and Muhammadan law officers were appointed to the Courts, and enjoined to return answers, conformable to

[1] Bomb. Reg. IV. 1827, s. 26.

their respective laws, to such questions as should be put to them by the Courts.[1]

Early in the present year an Act was passed by the Government of India, extending the principle of section 9 of Reg. VII. of 1832 of the Bengal code throughout the territories subject to the Government of the East-India Company. By this Act it was declared, that "So much of any law or usage now in force within the territories subject to the Government of the East-India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of cast, shall cease to be enforced as law in the Courts of the East-India Company, and in the Courts established by Royal Charter within the said territories."[2]

Thus far as regards the native Civil Laws. I now proceed to notice the Regulations respecting the reservation of the native Criminal Laws.

By Warren Hastings' plan in 1772, the Muhammadan Criminal Law was retained in the Criminal Courts, subject to the interposition of Government, or of the subordinate English functionaries, where its provisions were manifestly unjust. In 1790, when the Governor-General accepted the Nizámut of Bengal, the Criminal Courts then established were directed to pronounce sentence according to the Muhammadan law; and in cases of murder according to the doctrines of Yúsuf and Muhammad[3], as has been already noticed. The Muhammadan law was further ordered to be continued in the like manner in the Criminal Courts established in 1793.[4]

In 1832 it was enacted in Bengal that all persons, not professing the Muhammadan faith, might claim to be exempt from trial under the provisions of the Muhammadan Criminal Code for offences cognizable under the general Regulations.[5]

[1] Bomb. Reg. II. 1827, ss. 13. 29; Bomb. Reg. IV. 1827, s. 27.
[2] Act XXI. 1850. [3] Beng. Reg. XXVI. 1790, ss. 32, 33.
[4] Beng. Reg. IX. 1793, ss. 47. 50. 74, 75.
[5] Beng. Reg. VI. 1832, s. 5.

At Madras, in the year 1802, provisions were made respecting the administration of the Muhammadan Criminal Law in the Courts of the East-India Company, similar to those enacted in Bengal by Regulation IX. of 1793.[1]

The Criminal Law administered in the Company's Courts at Bombay previously to 1827, was ordered to be regulated by the law of the accused party: Christians and Pársís to be judged on the principles of the English law, and Muhammadans and Hindús according to their own particular laws.[2] The Muhammadan law was to be regulated by the Fatwa of the law officers, which was directed to be given according to the doctrine of Yúsuf and Muhammad; respecting which, and the law of the Hindús, the Judges were enjoined to refer to the translation of the Hidáyah by Hamilton, and of the Hindú laws by Halhed and Sir William Jones; as likewise to a tract entitled "Observations," which then constituted part of the Criminal Code for the province of Malabar and Salsette, &c.[3] In 1819 the Hindú Criminal Law was directed to be administered to Hindús in the Special Court.[4] The Native Criminal Laws were abolished in the Bombay Presidency in 1827, and a regular Code substituted in their place.

The Muhammadan Criminal Law, even when first reserved to the natives of the British territories in India, was subjected to many important restrictions in its application; and it has been so modified by the subsequent Regulations in the Presidencies of Bengal and Madras, as to present no vestiges of its sanguinary character, and but few of its original imperfections.[5]

[1] Mad. Reg. VII. 1802, ss. 15, 16; Mad. Reg. VIII. 1802, ss. 9, 10, 11.

[2] Bomb. Reg. V. 1799, s. 36; Bomb. Reg. III. 1800, s. 36; Bomb. Reg. VII. 1820, s. 17.

[3] Bomb. Reg. V. 1799, ss. 36. 39; Bomb. Reg. III. 1800, ss. 36. 39; Bomb. Reg. VII. 1820, ss. 17. 20.

[4] Bomb. Reg. X. 1819.

[5] The right existing in the Government to alter the Muhammadan law appears to have been virtually recognized by the 13th Geo. III. c. 63, s. 7, vesting in it authority for the ordering, managing, and governing, "in like manner (as the Act recites), to all intents and purposes whatever, *as the same now are, or at any time heretofore might have been, exercised* by the

The above are the Laws and Regulations now in force. It will be observed that, if we except the Bombay Regulations IV. of 1799, II. of 1800, and IV. of 1827, the reservation of the Native Civil Laws, both in the Statutes and Charters, and by the Regulations, was confined to *Gentûs*[1], or Hindús, and Muhammadans; a broad distinction of the natives of India into two classes, which most probably arose from the ignorance of our ancestors, and not from any intention of excluding other nations or sects from the benefit of their own laws. There are, however, as is well known, many other natives of India, who are neither Hindús nor Muhammadans. These form a large class, consisting of the Portuguese and Armenian Christians; the Pársís; the Sikhs; the Jains; the Burmese, and Avanese, who, together with the Chinese, many of whom have become naturalized in India, are Buddhists; and some few originally from Java and the Eastern Archipelago: to this class may be added the usual complement of that cosmopolitan parasite, the Jew. All these have their peculiar laws and usages, many of which are more or less connected with their religious belief: they seem, however, to be excluded from the benefit of such laws in the Queen's Courts. In the Supreme Court at Calcutta a case appears to have been once decided according to the Sikh law[2], but this was by reference to the Pandits; and thus, to use Sir Edward H. East's own words, he being Chief Justice at the time, "The difficulty was gotten over,

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President and Council in Select Committee;" because it was *then* before the Legislature that the President and Council *had* interposed, and altered the Criminal Law of the province in 1772. Such alterations, and all future necessary amendments thereof, appear, by the above clause, to be legally sanctioned. See Fifth Report from the Select Committee of the House of Commons, 1812. p. 40.

The late Sir Edward Hyde East, in his evidence before the Committee of the House of Lords in 1830, speaking of the term "Gentûs," used in the 21st Geo. III. c. 70, observes, "Whether that was intended to comprehend all other descriptions of Asiatics who happened to be located within the British bounds of India is perhaps very difficult to be told at this time of day."—Minutes of Evidence, p. 118. 4to. Edit.

[2] *Doe dem. Kissenchunder Shaw* v. *Baidam Beebee.* Vol. II. of this work, p. 22.

by considering the Sikhs as a sect of Gentoos or Hindoos, of whom they were a dissenting branch."[1] At any rate, it has been more than once held at Calcutta, that, with the exception of Hindús and Muhammadans, no suitor of the Supreme Courts is entitled to have any special law applied to his case.[2] In an old case it was decided by the Supreme Court at Bombay[3], that the Portuguese laws, in all points of succession, and of all personal rights, as those of husband and wife, remained in full force as regards the Portuguese in Bombay[4]; but it was also held in the same case that the law of Portugal could not of its own force operate at Bombay, and that the Portuguese were subject to the law of England alone, with the reservation of certain customs. Questions between Pársí litigants in the Supreme Court at Bombay appear to have been formerly adjudicated according to the provisions of the Hindú law, where there was no custom adduced to the contrary.[5] A recent case[6], also decided in the Supreme Court at Bombay, has determined that the ecclesiastical jurisdiction of the Court extends to Pársís, and that for such purpose they are included in the words "British subjects," contained in the clause of the Bombay Charter conferring such jurisdiction.

Questions of Hindú law, which come within the specification of the Statutes and Charters, are adjudicated in the Supreme Courts according to the doctrines of each particular school of law entertained by the parties, or according to any particular custom clearly proved to exist among such parties. With respect to Muhammadans, however, it is stated by Baillie, in the preface to his Treatise on Inheritance, that no

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[1] Appendix to Sir E. H. East's evidence before the Select Committee of the House of Lords, 1830, p. 140. 4to. edit.

[2] *Jebb* v. *Lefevre*, Cl. Ad. R. 1829, 56. *Musleah* v. *Musleah*, 1 Fulton, 420. Grant, J., however, dissented in this latter case, and thought that the Jewish law ought to be applied.

[3] *De Silveira* v. *Texeira*. Vol. II. of this work, p. 247.

[4] And see Sir Ralph Rice's evidence before the Select Committee of the House of Lords, 1830, p. 168. 4to. edit.

[5] Ibid. p. 168.

[6] *Perozeboy* v. *Ardaseer Curseljee*. Vol. II. of this work, p. 335.

other than the Sunníy law has ever been administered in the Supreme Court at Bengal.[1] It may be true that no case may have as yet occurred in that Court, in which the parties held other than the Sunníy doctrines; but there can be little doubt that, in the event of a case arising between Muhammadans not being Sunníys, the law administered would be according to the religious persuasion of the litigants. In a case recently decided in the Supreme Court at Bombay, where the parties held particular tenets scarcely compatible with the Muhammadan law, Sir E. Perry, C. J., in delivering judgment, remarked—"I am clearly, therefore, of opinion, that the effect of this clause in the Charter is, not to adopt the text of the Korán as law, any further than it has been adopted in the laws and usages of the Muhammadans who came under our sway; and if any class of Muhammadans, Muhammadan dissenters as they may be called, are found to be in possession of any usage which is otherwise valid as a legal custom, and which does not conflict with any express law of the English Government, they are just as much entitled to the protection of this clause as the most orthodox Sunníy who can come before the Court."[2] This language would of course apply to the Imámíyah doctrine; and indeed the learned Chief Justice seems inclined to a much more liberal interpretation of the Law than has prevailed in the Supreme Court at Calcutta; for he goes on to say, "How far the peculiar laws of non-Christian aliens would be recognized, it may not be very easy, nor is it necessary, to define beforehand. On each occasion it would afford matter for judicial discussion and determination when the question arose. But on very many questions, such as marriage, divorce, succession, and, possibly, adoption, there seems no reason to doubt that the proper law to be referred to for the decision of any controversy, would

[1] Baillie, Muhammadan Inheritance, Preface, p. vi. In p. 339, n. 3, of this volume, I have erroneously stated that no other than the Sunníy law is administered, between Muhammadan parties, in the Supreme Courts in India. The reader is requested to correct the fault.

[2] *Case of the Kojahs and Memon Cutchees.* Vol. II. of this work, p. 443.

not be the law of the Christian community, but the law and usage of the peculiar non-Christian class." And again, "The conclusion I draw is, that if a custom, otherwise valid, is found to prevail amongst a race of eastern origin, and non-Christian faith, a British Court of Justice will give effect to it, if it does not conflict with any express Act of the Legislature."[1]

In the Courts of the Honourable East-India Company an extended and liberal interpretation of the wording of the Regulations has always existed[2]; and we find, accordingly, numerous cases that have been decided according to the laws of the Portuguese, Armenians, Jains, and Pársís, so far as such laws could be ascertained, and the tenets of the Shíâh sect of Muhammadans.[3] The native law of contracts, which is not included in the specific words of the Regulations, is also frequently administered in the Honourable Company's Courts according to native law.[4]

It does not appear that any appeal has been presented to the Privy Council against any decision of the Courts below founded on other native laws than those of the Hindús and Muhammadans. The Judicial Committee of the Privy Council, however, receive the Shíâh law, and have so construed the Bengal Reg. IV. of 1793, in a case which was decided in 1841.[5] In

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[1] Vol. II. of this work, pp. 446, 447.

[2] The Advocate-General recommended, in a case submitted to him by the Sudder Dewanny Adawlut of Bengal in Feb. 1799, that foreign laws and customs not Hindú or Muhammadan should be ascertained by evidence. It may be observed, that the *intention* of the Regulations does not seem to have been to confine the reservation of the native laws to the Hindú and Muhammadan Codes. For instance, we find in the rules regulating special appeals, that such appeals were to be allowed when the judgment should appear to be inconsistent with the Regulations, or with the Hindú and Muhammadan laws, in cases which were required to be decided by those aws, *or with any other law or usage which might be applicable to the case.*

[3] See the placita under the title GIFT, numbers 81, 82. HUSBAND AND WIFE, numbers 80 *et seq.*; INHERITANCE, numbers 323 *et seq.*; and PRACTICE, 234 *et seq.* *Infrà*, pp. 272. 298. 349. 521.

[4] See the placita under the title CONTRACT, numbers 1 *et seq.* *Infrà*, pp. 104, 105.

[5] *Rajah Deedar Hossein* v. *Ranee Zuhooroonisa.* 2 Moore Ind. App. 441.

another case, also, they decided, in general terms, that they were bound to take notice of the law of the country from which the appeal came, and to decide according to it, even although it had not been noticed in the Court below.[1]

Such is the present state of the Law, and the practice of the Courts, with respect to the administration of the native laws in India; and whatever may be the ultimate effect of the recent innovations, it cannot be denied that the preservation of such laws is in conformity with the doctrines of the ablest writers on jurisprudence, and is founded on "the wisdom of experience and the dictates of humanity."[2]

Warren Hastings, in pursuance of that enlightened and liberal policy which so eminently distinguished his government in India in all that regarded the conciliation and welfare of its native inhabitants[3], was, as we have seen, the first to recommend and adopt the preservation of their laws. In furtherance of his plan for the administration of justice, he stated, in a letter addressed to the Court of Directors, in March 1773, "That in order to render more complete the Judicial Regulations, to preclude arbitrary and partial judgments, and to guide the decisions of the several Courts, a well-digested Code of Laws, compiled agreeably to the laws and tenets of the Mahometans and Gentoos, and according to the established customs and usages, in cases of the revenue, would prove of the greatest public utility[4];" and in a subsequent letter, with which he transmitted to England a specimen of a

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[1] *Sumboochunder Chowdry* v. *Naraini Dibch.* 3 Knapp 55.

[2] Strange's Elements of Hindu Law. Vol. I. Introd. p. x. 2d edit.

[3] "He was the first foreign ruler," says Mr. Macaulay, "who succeeded in gaining the confidence of the hereditary priests of India, and who induced them to lay open to English scholars the secrets of the old Brahminical theology and jurisprudence." This, however, is but a tardy acknowledgment, introduced nearly at the end of an essay attacking on almost every point the public and private character of the great Governor-General.—See Macaulay's Essays, Vol. III. 5th edit.

[4] Proceedings of the Governor and Council at Fort William respecting the administration of justice amongst the natives in Bengal, p. 33. 4to. 1774.

Hindú Code drawn up by his order, occurs the following remarkable passage:—"From the labours of a people, however intelligent, whose studies have been confined to the narrow circle of their own religion, and the decrees founded upon its superstitions, and whose discussions in the search of truth have wanted that lively aid which it can only derive from a free exertion of the understanding, and an opposition of opinions, a perfect system of jurisprudence is not to be expected. Yet if it shall be found to contain nothing hurtful to the authority of Government, or to the interests of society, and is consonant to the ideas, manners, and inclinations of the people for whose use it is intended, I presume that, on these grounds, it will be preferable to any which even a superior wisdom could substitute in its room."[1]

Nor must the opinion of Sir William Jones on this subject be omitted; an opinion, it is true, given some time after the measure which he recommended had been adopted by the Government, in accordance with the views of Hastings, but which loses none of its authority on that account, gaining, on the contrary, additional weight, as being not merely the theoretical idea of an able man, but the well-considered result of a five years' residence in India, devoted, with unprecedented success, to the intimate study of those very laws and institutions, the preservation of which he so warmly advocates. "Nothing," says Sir William Jones[2], "could be more obviously just than to determine private contests according to those laws which the parties themselves had ever considered as the rules of their conduct and engagements in civil life; nor could any thing be wiser than, by a legislative act, to assure the Hindu and Muselman subjects of Great Britain that the private laws which they severally hold sacred, and a violation of which they would have thought the most grievous oppression, should not be superseded by a new system, of which they could have no knowledge, and which they must have consi-

[1] Proceedings of the Governor and Council at Fort William respecting the administration of justice amongst the natives in Bengal, p. 35. 4to. 1774.

[2] Letter to the Governor-General and Council of Bengal, dated March 19, 1788.—Sir W. Jones's Works, Vol. III. p. 73*. 4to. Lond. 1799.

dered as imposed on them by a spirit of rigour and intolerance."

Such, then, was the opinion of these great men; and although they wrote more than half a century ago, it is still entitled to our respect at the present day. The laws of the Hindús and Muhammadans are part and parcel of their religion, and believed by them to be of divine revelation; little or no change has taken place in the religious opinions of the natives since the days of Hastings and Jones; the Hindú still venerates the Institutes that have served to regulate the conduct of his forefathers for centuries; and the Muhammadan looks with undiminished respect on the precepts transmitted to him in the Korán by one whom he deems to be the last and the chief of the prophets of God.

A host of other writers, capable from long experience of forming a just estimate, might be quoted, upholding the same views: amongst them we find Verelst, Teignmouth, Strange, Harington, and William Macnaghten; whose names alone are sufficient in themselves to guarantee the value of their opinions on all questions connected with the welfare of the natives of India.

The Regulation VII. of 1832 of the Bengal Code, passed, at the time, for reasons which I have already alluded to, without attracting any particular attention, although the object of the Regulation was, in effect, to abrogate so much of the Hindú law as provided that a convert to Muhammadanism or Christianity should forfeit all claim to his share of any heritable property: a most serious innovation upon the Hindú law, affecting the system in one of its most important branches, and interfering in a powerful degree with the most vital doctrines of the Hindú religion.

It was not until a more formal proposition was made in 1842, and again subsequently in 1845 when the *Lex loci* was taken into consideration, to alter the native laws as regards inheritance and exclusion from cast, that any opposition was raised.[1] A Draft Act was prepared and submitted to the Govern-

[1] Special Reports of the Indian-Law Commissioners, 1843, p. 346 *et seq.* Ibid. 1847, p. 60 *et seq.*

ment by the Indian-Law Commissioners, in the former year, and again in 1845, containing a provision, that so much of the Hindú and Muhammadan law as inflicted forfeiture of rights or property upon any party renouncing, or excluded from, the communion of the Hindú or Muhammadan religion, should cease to be enforced as law in any of the Courts in India.[1] The Hindús presented memorials to the Governor-General, strongly expressive of their dissatisfaction at the proposed enactment, which they regarded as a violation of a solemn pledge, founded upon the Act of a superior and supreme legislature, confirmed by the local Government, and acted upon from the very period of British connexion with the Eastern Empire. They further intimated a fear that the security in person, property, and religion, hitherto ensured to them, thus undermined in one instance, might eventually be denied them altogether.[2] The proposed enactment was not sanctioned by the Government; but the recent Act XXI. of 1850, passed by the Legislative Council of India, extending the provisions of the 8th and 9th sections of the Bengal Regulation VII. of 1832, is to nearly the same effect, and has again called forth the remonstrance and roused the jealous suspicions of the Hindús. It is stated that they have already petitioned against the Act, and that it is their intention to appeal to Parliament on the subject.

The policy of the enactment of this Law is perhaps questionable: the beneficial results expected from its operation are at least doubtful. I allude, of course, to its anticipated effect in increasing the number of converts to Christianity. If it be true that the disinheritance, which, by the Hindú law, follows apostacy, militates against conversion to the truth,—that is, in other words, that many Hindús would become Christians were it not for the prospect of the loss they would thereby sustain,—the question arises, in the first place, whether it be desirable to receive such lukewarm believers into our Church? As well

[1] Special Reports of the Indian-Law Commissioners, 1843, p. 371; Ibid. 1847, pp. 630. 682.

[2] Ibid. 1847, p. 640 *et seq.*, and p. 649 *et seq.*

might we offer bounty-money to recruit the ranks of Christianity from the multitudes who would be willing to make a traffic of their consciences. Again, it is not reasonable to suppose that any great accession will be made to the number of converted Hindús by the operation of this new Law. The converts from the Hindú creed to Muhammadanism have of late years been very numerous; indeed, it is to be feared, far more numerous than those who have rewarded the labours of our Missionaries by embracing the Christian religion; and this, be it observed,. notwithstanding the Hindú law of forfeiture which has been denounced as holding so chief a place amongst the preventives of conversion. From this it may fairly be inferred that the comparative ill success of the Missionaries arises, not from the disabilities under which apostates and outcasts labour according to the Hindú law, but rather from the fact that the Muhammadan priest, however inferior in general education, has a much greater knowledge of the people with whom he has to deal, and conseqently a stronger hold upon their minds and imaginations, than that possessed by the Christian pastor. If such be the case, let our Missionaries strive to attain the same legitimate power of convincing the heathen. Every day they are acquiring a deeper insight into the manners and customs of the natives, and a more complete acquaintance with their languages; education, too, is advancing with rapid strides, thanks to the effectual measures that have been adopted by the Government; and as the approximative instruction of the teachers and the taught proceeds, we may hope to see the dark superstitions of the natives triumphantly superseded by the light of Christianity; then, and then only, will the time have arrived for extending to the mass of our Indian fellow-subjects the benefit of laws which they now can neither understand nor appreciate, and for effacing those institutions upon which their present social happiness so largely depends. The day has gone by when conversion was enforced by a mandate of the ruling power.

The Act of 1850 has been termed an Act for the promotion of religious liberty; but surely such a name can scarcely be applied with propriety to a law which not only implies a

violation of the rights of property, but, in the case of a Hindú, forbids him to hope for happiness in another world, whensoever his heir shall choose to forsake the faith of his forefathers.[1]

In considering the propriety of altering or abrogating the Hindú or Muhammadan laws, all pre-conceived notions of the relative excellence of the English and native systems of jurisprudence should be taken as secondary considerations; nor should it be called in question whether such systems are in themselves good or bad; for it should never be forgotten, that, in the present state of society in India, they are undoubtedly the best adapted to the wants and prejudices of the people who form the great bulk of the population of the country; that they are an integral part of the faith of that people; and that, though we may not be bound by absolute treaty, we have virtually pledged ourselves to preserve them by repeated proclamations and enactments.

The laws of the remaining class of natives, viz. those who are neither Hindús nor Muhammadans, are placed in a very different position. In some instances these laws are irrespective of religion; in almost all they depend more upon local customs than on written Codes; they never appear to have been admitted into the Queen's Courts; and whenever they have been administered in those of the East-India Company, with the exception of the Bombay Presidency, it has been done by a liberal extension by the Judges of the wording of the Regulations: added to this, the Government has never pledged itself in any way to preserve or administer such laws. The class itself, although collectively numerous, is composed of different sects and

[1] It is hardly necessary to state that the Hindús believe the attainment after death of "bliss in other worlds, immortality and heaven," to depend upon the proper performance of obsequies by the next heir of the deceased, the inheritance and the performance of the obsequies being inseparable. These obsequies cannot be performed by an apostate, or by one excluded from cast, who, in either case, is considered to be virtually dead, the performance of the funeral rites, and the consequent inheritance, devolving upon the next in succession. By the law of the Korán an infidel cannot succeed to the estate of a Muhammadan.

nations, which, taken separately, are of small extent and few in numbers, and mostly either foreign to the country, or but recently established there; and, finally, many of this class are anxious to be ranged under the protection of the British laws, instead of being subjected to the arbitrary rules of ill-ascertained usage.

The Armenians of Bengal, so long since as the year 1836, presented a petition to the Governor-General, in which, after setting forth the destitution of their legal condition, they add, "As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be discovered, your petitioners humbly submit that the Law of England is the only one that can, upon any sound principles, be permitted to prevail; and that it is moreover the law which was promised to Armenians at the time of their settlement in the country." This alleged promise is contained in an agreement between the Honourable East-India Company and Cogee Phanoos Calendar, an eminent Armenian merchant, which agreement is dated the 22d of June 1688.[1] It is unnecessary to discuss either the validity or the meaning of the agreement, as it is the desire only, and not the rights of the Armenian people, with which we are concerned in the present instance, and this desire is explicit.

The Pársís, who, if not the most numerous, are certainly the most wealthy and most influential of this class of natives on the Bombay side of India, are anxious to have a written Law framed for their sect, though they do not exactly want the English law, for instance, in respect to their widows and daughters, in regard to their share of the inheritance on a man's dying intestate.[2]

It would seem, therefore, that, as relates to this class of natives, the enactment of a *Lex loci* would not only be justifiable, but productive of benefit; and it would doubtless put

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[1] Special Reports of the Indian-Law Commissioners 1842, p. 465.

[2] See the Minute of Sir George Anderson, dated 23d January 1843; and the Minute of Mr. Giberne, dated 27th January 1843 Ib. 1847, pp. 619. 621.

an end to much uncertainty and many of the difficulties which at present encompass the administration of justice in the Mofussil.

I shall now proceed to give a succinct account of the different native laws administered in our Courts in India; of the various doctrines entertained by the native lawyers; in what districts, and amongst what sects, they prevail; and of the works in which such laws are written, and on which such doctrines are founded.

(1) Hindú Law.

(a) *Of the Sources of the Law.*

The civil and religious laws of the Hindús are believed by them to be of divine origin; one portion called Sruti, or "That which is heard," and which constitutes the Védas, being supposed to be in the very words revealed by Brahma himself; and another denominated Smriti, or "That which is remembered," comprising the Dharma Shastra, and imagined to have been communicated to mankind through the medium of inspired writers.

The Dharma Shastra comprehends not only Law in its usual sense, but rules for religious observances, and ancient and modern rituals. It is, however, generally understood as meaning exclusively Forensic Law and Civil duties, which are considered by the Hindú lawyers under the distinct heads of Private contests and Forensic practice; the former head comprehending Law, private and criminal, whilst the latter includes the forms of procedure, the rules of pleading, the law of evidence, adverse titles, oaths, and ordeal.[1]

Both the Sruti and the Smriti are interpreted by the same rules, which are collected in the Mímánsás, or disquisitions on proof and authority of precepts, and considered to be a branch

[1] Colebrooke's Digest of Hindu Law, Vol. I. Pref. p. xii. 8vo. Lond. 1801.

of philosophy. The Mímánsás are described by Colebrooke as "properly the logic of the law."[1]

(b) *On the various Schools of Hindú Law.*

In eastern India the Védas and the Mímánsás are less studied than in the south, and the lawyers of Bengal and Behar take the Nyáya[2], or dialectic philosophy, for rules of reasoning and interpretation of the Law.[3] Hence arose the two principal schools, which deduced different inferences from the same maxims, and from which other schools again have diverged, each interpreting the Law according to the *dicta* of some favourite author.

Five Schools of Law may be said to exist at the present day; viz. the Gauriya (Bengal), Mithila (North Behar), Benáres, Mahárashtra (the Mahratta country), and Drávida (the south of the peninsula)

It would be almost impossible to define with accuracy the limits of these several schools; nor, indeed, is there that great distinction between them which by some writers has been supposed to exist. The Bengal School, it is true, stands nearly alone, particularly with regard to the Law of Inheritance, in which there is a wide difference in doctrine between the northern and the other schools, the latter receiving some treatises in common, which are totally rejected by the Gauriya lawyers. The Bengal school assimilates in some points with that of Mithila; inheritance, however, being still excepted.

[1] The two Mímánsas (for there are two schools of metaphysics under this title) are emphatically orthodox. The prior one (Púrva), which has Jaimini for its founder, teaches the art of reasoning, with the express view of aiding the interpretation of the Védas. The latter (Uttara), commonly called Védanta, and attributed to Vyása, deduces, from the text of the Indian scriptures, a refined psychology, which goes to a denial of a material world.—Colebrooke on the Philosophy of the Hindus. Essays, Vol. I. p. 227.

[2] The Nyáya, of which Gautama is the acknowledged author, furnishes a philosophical arrangement, with strict rules of reasoning, not unaptly compared to the Dialectics of the Aristotelian school.—Colebrooke on the Philosophy of the Hindus. Essays, Vol. I. p. 227.

[3] Colebrooke, in Strange's Hindu Law, Vol. I. p. 316. Second edition.

Looking to the west and south of India, we find that the main distinction between the Benáres, Mahárashtra, and Drávida schools, is, in fact, rather a preference shewn by each respectively for some particular work as their authority of Law, than any real or important difference of doctrine. It is very probable that this preference for particular treatises arose originally, not so much from their actual, or even fancied, superiority over other works, as from the ignorance of the lawyers, practically, of the existence of authorities not generally current in their respective provinces, and from the fact that such law-books were, in most cases, first promulgated in the very districts in which they are now pre-eminent.

In all the western and southern schools the prevailing authority is the nearly-universal Mitákshará; and although the Mahrattas may prefer the Mayúkha to the Mádhavíya, and the contrary may be the case in the Karnáta country, whilst in other districts other treatises are referred to, still the Law itself, even in regard to inheritance, is essentially the same throughout southern India.

However, as there does exist this distinction between the Bengal school and those of the west and south, and this preference with respect to the books referred to, it becomes advisable to give some idea of the extent and situation of the districts where the doctrines of the several schools are current.

The Gauriya, or Bengal school of Law, prevails over the whole province of Bengal Proper, and apparently is co-extensive with the Bengálí language, or, at least, is of authority wherever the Bengálí is spoken by the inhabitants of the country.

The Mithila school is that of north Behar, or Tirhút, the ancient kingdom of Mithila, which, though not often mentioned in history, is famous for having been the residence of Síta, Ráma's wife.

The doctrine of the school of Benáres is followed in the city and province of that name, and is the prevailing school of middle India. This doctrine is also current in Orissa, and extends from Midnapur to the mouth of the Hooghly, and thence to Cicacole.

The Mahárashtra is the school which governs the law in the country of the Mahrattas. The south limit of the Mahratta

country may be loosely stated as passing from Goa through Kolapur and Bidr to Chandra; the eastern line follows the Warda river to the Injádri, or Satpúra hills, south of the Nerbudda, and which form its northern limit, as far west as Nandód; and the western boundary may be marked by a line drawn from Nandód to Damán, and thence following the sea-coast as far as Goa: in other words, the Mahárashtra school prevails wherever the Mahratta language is spoken by the natives.

The Drávida school is that of the whole of the southern portion of the peninsula; but it may be subdivided into three districts, in each of which some particular law treatises have more weight than others: these districts are, Drávida, properly so called, Karnátaka, and Andra. Drávida Proper is the country where the Tamil language is spoken, and occupies the extreme south of the peninsula: its boundaries may be traced by a line drawn from Pulicat to the ghâts between Pulicat and Bangalur, and then following the ghâts westward, and along the boundary between Malabar and Kanara to the sea, including Malabar. The Karnátaka country is bounded on the west by the sea-coast as far as Goa, thence by the western ghâts up to Kolapur, to the north by a line drawn from Kolapur to Bidr, and on the east by a line from Bidr through Adóni, Anandpur, and Nandidrúg, to the ghâts between Pulicat and Bangalur: this is the country where the Karnátaka language is now spoken. The third district, the Andra, where the Telinga or Telugu is now the spoken language, extends from the boundary line last mentioned, and which, prolonged to Chandra, will form its western limit; on the north it is bounded indistinctly by a line running eastwards to Sohnpur on the Mahanaddí river; and on the east by a line drawn from Sohnpur to Cicacolo, and thence to Pulicat, where the Tamil country begins. Mr. Ellis imagines that there are laws existing in the southern provinces which are of higher antiquity than those introduced from the north, although not all derived from the same source[1]: this supposition is favoured by the fact,

[1] Ellis, on the Law-Books of the Hindus, in the Transactions of the Literary Society of Madras. Pt. I. p. 17.

that Professor Wilson thinks it probable that the civilization of the south of India may date as far back as ten centuries before Christ.

These are the limits of the various schools of Law, so far as they can be approximately defined. It must, however, be borne in mind, that though some works have especial weight respectively in the several schools, it seems that most of them, if known, would be respected in all, excepting Bengal; the broad division of doctrine being between the Law of Bengal and that of Benáres, to which all the remaining schools more or less assimilate.

I shall now consider the law-books of the Hindús generally; and then proceed to describe them *seriatim*, specifying such as are of chief authority, or more generally referred to by the lawyers in the respective schools and districts.

(c) *On the Hindú Law-Books.*

The Dharma Shastra may be conveniently divided into three classes—

I. The Smritis, or Text-books, which are the foundation of all Hindú law, and which are attributed to various ancient Rishis, or sages, who are supposed to have been inspired. These Smritis are all, with slight variation, in form and doctrine the same with the Institutes of Menu.

II. The Vyákhyána, or Glosses and Commentaries upon these Smritis, many of which partake of the nature of Digests.

III. The Nibandhana Grantha, or Digests properly so called, either of the whole body of the Law or of particular portions thereof, collected from the text-books and their commentators.

A fourth class of works may be added as an authority of Hindú law, viz. the works on the subject by European authors. These I shall mention separately.

I. The Smritis, Text-books, Institutes, or Collections (Sanhitá), attributed to various Rishis, are all divided into three Kándas, or sections; the first, Áchára, treating of religious ceremonies and daily observances; the second, Vyavahára, of law

and the administration of justice; and the third, Práyaschitta, relating to penance and expiation.

The Smritis, are enumerated differently by various writers: the Padma Purána gives the names of thirty-six Rishis; whilst Yájnavalkya, and Parásara mention only twenty. Yájnavalkya gives the following list:—Manu, Atri, Vishnu, Hárita, Yájnavalkya, Usanas, Angiras, Yama, Ápastamba, Samvarta, Kátyáyana, Vrihaspati, Parásara, Vyása, Sankha and Likhita (who were brothers, and wrote each a Smriti separately, and one jointly, the three being now considered as one work), Daksha, Gautama, Sátátapa, and Vasishtha. Parásara, whose name appears in the above list, enumerates also twenty select authors; but instead of Yama, Vrihaspati, and Vyása, he gives the names of Kasyapa, Gárgya, and Prachétas.[1] The Padma Purána, omitting the name of Atri in Yájnavalkya's list, completes the number of thirty-six above-mentioned by adding Maríchi, Pulastya, Prachétas, Bhrigu, Nárada, Kasyapa, Viswámitra, Devala, Rishyasringa, Gárgya, Baudháyana, Paithínasi, Jábáli, Sumantu, Paráskara, Lókákshi, and Kuthumi. Of these writers four have been respectively considered as the principal authorities in each of the four ages of the world; viz. Manu in the Krita Yuga; Gautama in the Treta Yuga; Sankha and Likhita in the Dwápara Yuga; and Parásara in the Kali Yuga, or present age. Several Smritis are sometimes ascribed to the same author: his greater or lesser Institutes (Vrihat or Laghu), or a later work of the author when old (Vriddha).[2]

It appears from internal evidence to be probable that treatises attributed to these Rishis are extant, which, like the Puránas, all of which are said to have been written by Vyása, are by different authors; and indeed, as the reputed authors are mentioned in the texts in the third person, it is likely, as explained by the commentators, that the text-books were compiled by the pupils from the oral instructions of their master.

Whatever may be the authenticity or antiquity of these

[1] Parásara, I. 13; 16.

[2] Colebrooke in Strange's Hindu Law, Vol. I p. 316. 2d. edit.

books, they are all venerated by the Hindús as next in sanctity to the Védas themselves, their authority being, moreover, confirmed by a text from the same holy writings, thus translated by Sir William Jones, according to the gloss of Sankara :—
"God having created the four classes, had not yet completed his work: but in addition to it, lest the royal and military class should become insupportable through their power and ferocity, he produced the transcendent body of law; since law is the king of kings, far more powerful and rigid than they. Nothing can be mightier than law, by whose aid, as by that of the highest monarch, even the weak may prevail over the strong."

It must be observed that many Smritis are quoted or referred to by legal writers which are no longer extant; and it is even said to be the opinion of the Brahmans, that, with the exception of Menu, the entire work of no one of these sages has come down to the present time.[1]

The Mánava Dharma Shástra, or Institutes of Menu, the highest authority of memorial law[2], is universally allowed by the Hindús not only to be the oldest work, but also the most holy after the Védas; and as, in addition to this, the other text-books are, as it were, formed on the same model, it may be fairly considered as the basis of the whole present system of Hindú jurisprudence. Besides the usual matters treated of in a Code of Laws, the Mánava Dharma Shástra, which is divided into twelve books, comprehends a system of cosmogony, the doctrines of metaphysics, precepts regulating the conduct, rules for religious and ceremonial duties, pious observances, and expiation, the laws of purification and abstinence, moral maxims, regulations concerning things political, military, and commercial, the doctrine of rewards and punishments after death, and of the transmigration of souls, together with the means of attaining eternal beatitude.

The author of the Institutes is supposed to be Menu, surnamed Swáyambhuva, *i.e.* issuing from the self existent, and who

[1] Ward's View of the History, Literature, and Religion of the Hindoos. Vol. I. p. 447.

[2] Colebrooke's Digest of Hindu Law, Vol. I. p. 454, 2d edit.

was the first of the seven Menus who governed the world. Brahma himself is related to have revealed them to his offspring; the Rishi Bhrigu subsequently promulgating the laws thus communicated by Divine revelation.

Disregarding the fabulous statements of the Hindús, the authorship and antiquity of the Mánava Dharma Shástra still remain surrounded with considerable obscurity. The arguments of Sir William Jones, who endeavoured to fix the date of the actual text at about the year 1280 before Christ, are almost as inconclusive as the traditions of the Brahmans; and the various epochs fixed by different authors seem to leave the question still undetermined. Chézy[1] and Deslongchamps, the latter of whom professes to have formed his opinion from an examination of the Code itself[2], conceive that it was composed in the thirteenth century previous to our æra. Schlegel gives it as his decided and well-considered opinion, "quod multorum annorum meditatio me docuit," that the laws of Menu were promulgated in India at least as early as the seventh century before Alexander the Great, or about a thousand years before Christ[3]: he places the Rámáyana of Valmíki at about the same date, and doubts as to which is the older of the two. Elphinstone, who is inclined to attribute great antiquity to the Institutes of Menu, on the ground of the difference between the law and manners therein recorded and those of modern times, and from the proportion of the changes which took place before the invasion of Alexander, infers that a considerable period had elapsed between the promulgation of the Code and the latter epoch; and he fixes the probable date of Menu to use his own words, "very loosely, at some time about half way between Alexander (in the fourth century before Christ) and the Védas (in the fourteenth)."[4]

Professor Wilson, however, thinks that the work of Menu, as we now possess it, is not of so ancient a date as the Rámá-

[1] Journal des Savans, 1831.
[2] Deslongchamps, Lois de Manou, Préface p. v.
[3] Zeitschrift für die Kunde des Morgenlandes. Bd. 3, p. 379.
[4] Elphinstone, History of India, Vol. I. p. 437. 2d. edition.

yana, and that it was most probably composed about the end of the third or the commencement of the second century before Christ. This opinion of the highest living authority on the subject must be considered as decisive, so far as present materials can enable us to approximate the truth.[1]

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[1] Since writing the above, I have been favoured with the following very interesting communication on the sources of the Mánava Dharma Sástra from my friend Dr. Max Müller, the learned Editor of the Rig Veda:—

"9 *Park Place, Oxford, July* 29, 1849.

"My Dear Morley—I have been looking again at the Law-literature, in order to write you a note on the sources of Manu. I have treated the subject fully in my introduction to the Véda, where I have given an outline of the different periods of Vaidik literature, and analyzed the peculiarities in the style and language of each class of Vaidik works. What I consider to be the sources of the Mánava-dharma-sástra, are the *Sútras*. These are works which presuppose the development of the prose literature of the *Bráhmanas* (like the Aitaréya-Bráhmana, Taittiríya-Bráhmana, etc.). These Bráhmanas, again, presuppose, not only the existence, but the collection and arrangement of the old hymns of the four Sanhitás. The Sútras are therefore later than both these classes of Vaidik works, but they must be considered as belonging to the Vaidik period of literature, not only on account of their intimate connection with Vaidik subjects, but also because they still exhibit the irregularities of the old Vaidik language. They form, indeed, the last branch of Vaidik literature; and it will perhaps be possible to fix some of these works chronologically, as they are contemporary with the first spreading of Buddhism in India.

"Again, in the whole Vaidik literature there is no work written (like the Mánava-dharma-sástra) in the regular epic Sloka, and the continual employment of this metre is a characteristic mark of post-Vaidik writings.

"One of the principal classes of Sútras is known by the name of *Kalpa-sútras*, or rules on ceremonies. These are avowedly composed by human authors; while, according to Indian orthodox theology, both the hymns and Bráhmanas are to be considered as revelation. The Sútras generally bear the name of their authors, like Ásvaláyana, Kátyáyana, etc., or the name of the family to which the Sútras belonged. The great number of these writings is to be accounted for by the fact that there was not one body of Kalpa-sútras binding for all Brahmanic communities, but that different old families had each their own Kalpa-sútras. These works are still very frequent in our libraries, yet there is no doubt that many of them have been lost. Sútras are quoted which do not exist in Europe, and the loss of some is acknowledged by the Brahmans themselves. There are, however, lists of the old Brahmanic families which were in possession of their own redaction of Vaidik hymns (Sanhitás), of Bráhmanas and of

Whatever may be the exact period at which the Mánava Dharma Shástra was composed or collected, it is undoubtedly

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Sútras. Some of these families followed the Rig-véda, some the Yajur-véda, the Sáma-véda and Átharva-véda; and thus the whole Vaidik literature becomes divided into four great classes of Bráhmanas and Sútras, belonging to one or the other of the four principal Védas.

"Now, one of the families following the Yajur-véda were the *Mánavas* (cf. Charanavyúha). There can be no doubt that this family, too, had its own Sútras. Quotations from Mánava-sútras are to be met with in Commentaries on other Sútras; and I have found, not long ago, a MS. which contains the text of the Mánava-srauta-sútra, though in a very fragmentary state. But these Sútras, the Srauta-sútras, treat only of a certain branch of ceremonies connected with the great sacrifices. Complete Sútra works are divided into three parts; the first (Srauta) treating on the great sacrifices, the second (Grihya) treating on the Sanskáras, or the purificatory sacraments; the third (Sámayáchárika or Dharma-sútras) treating on temporal duties, customs, and punishments. The two last classes of Sútras seem to be lost in the Mánava-sútra. This loss is, however, not so great with regard to tracing the sources of the Mánava-dharma-sástra; because, whenever we have an opportunity of comparing Sútras belonging to different families, but following the same Véda, and treating on the same subjects, the differences appear to be very slight, and only refer to less important niceties of the ceremonial. In the absence, therefore, of the Mánava-sámayáchárika-sútras, I have taken another collection of Sútras, equally belonging to the Yajur-véda, the Sútras of Ápastamba. In his family we have not only a Bráhmana, but also Ápastamba-Srauta, Grihya, and Sámayáchárika-sútras. Now it is, of course, the third class of Sútras on temporal duties which are most likely to contain the sources of the later metrical Codes of Law, written in the classical Sloka. On a comparison of different subjects, such as the duties of a Brahmachári, a Grihastha, laws of inheritance, duties of a king, forbidden food, etc., I find that the Sútras contain generally almost the same words which have been brought into verse by the compiler of the Mánava-dharma-sástra. I consider, therefore, the Sútras as the principal source of the metrical Smritis, such as the Mánava-dharma-sástra, Yájnavalkya-dharma-sástra, etc., though there are also many other verses in these works which may again be traced to different sources. They are paraphrases of verses of the Sanhitás, or of passages of the Bráhmanas, often retaining the same old words and archaic constructions which were in the original. This is, indeed acknowledged by the author of the Mánava-dharma-sástra, when he says (B. II. v. 6), "The roots of the Law are the whole Véda (Sanhitás and Bráhmanas), the customs and traditions of those who knew the Véda, (as laid down in the Sútras), the conduct of good men, and one's own satisfaction." The Mánava-dharma-sástra may thus be considered as the last redaction of the laws of the Mánavas. Quite different is the question as to

of very great antiquity, and is eminently worthy of the attention of the scholar, whether on account of its classic beauty, and proving, as it does, that, even at the remote epoch of its composition, the Hindús had attained to a high degree of civilization; or whether we regard it as held to be a divine revelation, and consequently the chief guide of moral and religious duties, by nearly an hundred millions of human beings whom Providence has placed under our protection.

The Code of Menu is divided into twelve books, and comprises in all 2685 Slokas or couplets.

Various editions of the text of Menu have been published, as also translations by Sir William Jones, Sir Graves Haughton, and an anonymous writer; and in French by M. Loiseleur Deslongchamps.[1] The version by Jones has been generally

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the old Manu, from whom the family probably derived its origin, and who is said to have been the author of some very characteristic hymns in the Rig-véda-sanhitá. He certainly cannot be considered as the author of the Mánava-dharma-sástra, nor is there even any reason to suppose the author of this work to have had the same name. It is evident that the author of the metrical Code of Law speaks of the old Manu as of a person different from himself, when he says (B. X. v. 63), "Not to kill, not to lie, not to steal, to keep the body clean, and to restrain the senses; this was the short law which *Manu* proclaimed amongst the four casts."

"Believe me,

"Yours very truly,

"M. Müller."

[1] मनुसंहिता तट्टीकाच मन्वर्थमुक्तावलीनाम्नी श्रीकुल्लुकभट्टेन कृता॥ 4to. Calcutta, 1813. मानवधर्म्मशास्त्रं॥ Mánava Dharma Sástra, or the Institutes of Menu, in Sanscrit and English, translated by Sir W. Jones, and edited by G. C. Haughton. 2 Vols. 4to. London 1825. मानवं धर्म्मशास्त्रं॥ Lois de Manou, publiées en Sanscrit, par Loiseleur Deslongchamps. 8vo. Paris, 1830. मनुसंहिता तट्टीकाच मन्वर्थमुक्तावलीनाम्नी श्रीकुल्लुकभट्टेन कृता॥ Menu Sanhita: The Institutes of Menu, with the Commentary of Kullúka Bhatta. 2 Vols. 8vo. Calcutta, 1830. Institutes of Hindú Law, or the Ordinances of Menu, according to the gloss of Cullúca, verbally translated from the original Sanscrit (by Sir W. Jones). Folio. Calcutta, 1794.—Works Vol. 3, p. 51, 4to. London, 1799. Mánava Dharma Sástra, Lois de Manou, traduites du Sanscrit par M. Loiseleur Deslongchamps. 8vo. Paris, 1833. श्रीमता भवानीचरणवन्द्योपाध्यायेन शोधिता वेदशरधराधराशाकीयफाल्गुणस्य विंशतिवासरे

considered the masterpiece of that learned and elegant writer: those by Haughton and Deslongchamps vary from it but slightly, and nowhere importantly. All these three translations are according to the gloss of Kullúka Bhatta, which will be presently noticed when we come to treat of the Commentaries and Digests.

Atri, the second writer of a text-book according to Yájnavalkya, but who is not mentioned in the Padma Purána, composed a law treatise in verse, which is still extant. Vishnu is also said to have written an excellent treatise in verse, and Háríta one in prose: these have both come down to us in an abridged metrical form. Yájnavalkya, the grandson of Visvámitra, appears, from the Introduction to his own Institutes, to have delivered his precepts to an audience of philosophers at Benáres.

The Yájnavalkya Dharma Shástra, or Institutes of Yájnavalkya, comprises three books, containing 1023 couplets. The age of this Code cannot be fixed with any certainty; but it is of considerable antiquity, as indeed is proved by passages from it being found on inscriptions in every part of India, dated in the tenth and eleventh centuries. "To have been so widely diffused," says Professor Wilson, "and to have then attained a general character as an authority, a considerable time must have elapsed; and the work must date, therefore, long prior to those inscriptions."[1] In addition to this, passages from Yájnavalkya are found in the Pancha Tantra[2], which will throw the date of the composition of his work at least as far back as the fifth century, and it is probable even that it may have originated at a much more remote period. It seems, however, that it is not earlier than the second century of our æra, since Professor Wilson supposes that

कलिकातानगरे समाचारचंद्रिकायंत्रेण मुद्रितेयं मनुसंहिता॥ Obl. Fol. Calcutta, 1833. Bengálí type. मनुसंहिता॥ The Laws of Menu the son of Brahmà. The first three books in Sanscrit, in the Dévanágari and Bengálí characters, with a literal translation into Bengálí, Sir William Jones's translation, and a revised English version. 4to. Calcutta. *Circa*, 1833.

[1] Journal of the Asiatic Society of Bengal, Vol. I. p. 84.

[2] Pantschatantrum, edidit Kosegarten, pars prima, pp. 80. 188. fol. Bonn. 1848.

the name of a certain money, Nanaka, which name is found in Yájnavalkya's Institutes, originated about that time.[1]

The Institutes of Yájnavalkya were published in the original at Calcutta.[2] An edition of the text, together with a German translation, has also lately appeared[3]; this edition, which we owe to Dr. Stenzler of Breslau, is further enriched with marginal notes, pointing out the parallel passages in the Mánava Dharma Shástra, an addition which is extremely useful in comparing the doctrines of the two great lawgivers.

The other Smritis now extant, according to Colebrooke[4], are as follows:—The Institutes of Usanas, in verse, with an abridgement; a short treatise, containing about seventy couplets, by Angiras, who is supposed to have lived in the reign of the second Menu; a short tract of a hundred couplets by Yama, brother of the seventh Menu; a work in prose, by Ápastamba, and an abridgement of it in verse; a metrical abridgement of the Institutes of Samvarta; a clear and full treatise by Kátyáyana; an abridgement of the Institutes of Vrihaspati, if not the Code at large; a work by Parásara, who is the highest authority for the fourth age of the world; some works connected with law, by Vyása, the reputed author of the Puránas; the joint work of Sankha and Likhita, which has been abridged in verse, and their separate tracts, also in verse; a treatise in verse by Daksha; an elegant treatise in prose by Gautama; an abridgement in verse of a treatise on penance and expiation by Satátapa; and the elegant work in prose, mixed with verse, by Vasishta, the preceptor of the inferior gods, who is the last of twenty legislators mentioned by Yájnavalkya. Besides these Smritis, Steele gives, in his list of Hindú law-books, an additional one, the Wamun Smriti, which he says was written by Wamun, a Brahman Rishi of Hindustán.[5]

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[1] Wilson's, Ariana Antiqua, p. 364. 4to. Lond. 1841.

[2] याज्ञवल्क्यसंहिता श्रीभवानीचरणवंद्योपाध्यायेन मुद्रांकिता ॥ Oblong Fol. Calcutta. *Circa* 1840—45.

[3] याज्ञवल्क्यधर्मशास्त्रम् ॥ Yâjnavalkya's Gesetzbuch, Sanskrit und Deutsch, herausgegeben von Dr. A. F. Stenzler. 8vo. Berlin, 1849.

[4] Colebrooke's Digest of Hindu Law, Pref. p. xvi *et seq.* 2d edit.

[5] Steele's Summary of the Law and Custom of Hindoo Castes, p. 2.

An edition of the text of the Smritis, comprising those of Angiras, Atri, Ápastamba, Usanas, Kátyáyana, Daksha, Parásara, Yama, Yájnavalkya, Likhita, Vishnu, Vrihaspati, Vyása, Sankha, Samvarta, Hárita, Gautama, Sátátapa, and Vasishtha, has been published in Calcutta.[1]

Before concluding this short notice of the text-books, it must be remarked that the Smritis are, for the most part, of small extent, and relate almost exclusively to daily observances and religious ceremonies, touching upon law only incidentally; and that the Smritis themselves, which are received in common by all the schools, are no longer *final* authorities, even where they do treat of law. Vrihaspati says, "A decision must not be made by having recourse to the letter of written Codes; since, if no decision were made according to the reason of the Law (or immemorial usage), there might be a failure of justice."[2] The Mánava Dharma Shástra itself is, indeed, now regarded "as a work to be respected, rather than, in modern times, to be implicitly followed."[3] For *final* authority, then, in deciding questions of law, recourse must be had to the Commentaries and Digests.

II. The Commentaries, which form the second great authority of Hindú law, are tolerably numerous. Some are merely explanatory of the text, but others are regarded as final authorities; and these latter, together with the Digests, the third class of law-books, are the immediate authorities for the opinions of lawyers in the respective schools where the doctrines they uphold may prevail. Many of the Commentaries on the Smritis,—such, for instance, as those on Menu's Institutes, which are merely explanatory of the text,—are not considered to be final authorities, any more than the Smritis themselves; but others again, which, by the introduction of quotations

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[1] अङ्गिरःसंहिता॥ अत्रिसंहिता॥ आपस्तम्भसंहिता॥ उशनःसंहिता॥ कात्यायनसंहिता॥ दक्षसंहिता॥ पराशरसंहिता॥ यमसंहिता॥ याज्ञवल्क्यसंहिता॥ लिखितसंहिता॥ विष्णुसंहिता॥ बृहस्पतिसंहिता॥ व्याससंहिता॥ शंखसंहिता॥ संवर्त्तसंहिता॥ हारीतसंहिता॥ गौतमसंहिता॥ शातातपसंहिता॥ वसिष्ठसंहिता॥ अभिधानीचरणवंद्योपाध्यायेनमुद्रिताः॥ Oblong fol. Calcutta 1845, *et ann. seq.*

[2] Colebrooke's Digest of Hindu Law, Vol. II. p. 128. 2d edit.

[3] Strange's Hindu Law, Vol. I. Pref. p. xiii. 2d edit.

from other writers, and by interpreting and enlarging on the meaning of the author, partake so far of the nature of general Digests, are referred to for the final decision of questions. The Mitákshará is a remarkable instance of this; since, though professedly only a Commentary on the Smriti of Yájnavalkya, it is consulted as a final authority over the whole of India, with the exception of Bengal alone.

The Mánava Dharma Shástra has, as may be imagined, been the subject of several Commentaries; indeed, independently of its celebrity, and its supposed pre-eminence in antiquity and sanctity, its extreme conciseness has rendered it peculiarly attractive to the subtle-minded Hindú lawyers, and adapted to those ingenious refinements of reasoning, with which their works abound.

Amongst these Commentaries the most celebrated are, the one by Médhátithi, son of Víraswámi Bhatta, which, being partially lost, has been completed by other hands; the Comment by Govinda Raja; another by Dharanídhara; and the more famous gloss by Kullúka Bhatta, entitled the Manvartha Muktávali.

These Commentaries are all in considerable repute. Sir William Jones, however, characterizes the first as prolix and unequal; the second as concise but obscure; and the third as often erroneous; reserving for the Manvartha Muktávali that unqualified praise, in which he occasionally indulged when predilection somewhat warped his judgment. The period when Kullúka Bhatta flourished is not known; but he tells us himself that he was of a good family in Bengal, and that he resided on the banks of the Ganges at Benáres. It may be remarked that some ancient commentators speak of the Mánava Dharma Shástra as only adapted to the good ages, and not applicable to the time in which they wrote; a qualification nowhere expressed in the gloss of Kullúka Bhatta, and therefore arguing the superior antiquity of the latter: at the same time it is evident, from Kullúka's work itself, that opinions had already begun to change, and therefore that it must have been composed a considerable period subsequently to the promulgation of Menu's Institutes.

In addition to these Commentaries, M. Deslongchamps men-

tions, that, in preparing his edition of the Institutes, he made use of one by Rághavánanda, entitled Manvarta Chandriká, which he states to be in many instances more precise and clear than the gloss of Kullúka.[1] Bháguri is also said to have written a Commentary on the Mánava Dharma Shástra. Steele mentions two other glosses on Menu as known among the Mahrattas—the Mádhava, by Sáyanáchárya, which is stated to be of general authority, especially in the Carnatic; and the Nandarajkrit, by Nandarája: both of these works are spoken of as ancient; but as their authors are said to have been natives of Anagundi or Vijayanagar, the date of which is the middle of the fourteenth century, they cannot be very old.[2] Lastly, Colebrooke mentions a Commentary on Menu, which, however, he had never seen: it is called the Kámadhénu, and is cited by Srídharáchárya in his Smritisára.

All the above mentioned Commentaries are merely explanatory of the text, and must not be considered as final authorities.

An excellent Commentary on the Institutes of Vishnu, entitled the Vaijayanti, was written by Nanda Pandita.

The copious gloss of Aparárka, of the royal house of Selára, is supposed to be the most ancient Commentary on the Institutes of Yájnavalkya, and to be, therefore, earlier than the more celebrated Comment on the same text, the Mitákshará of Vijnánéswara, who is understood for the most part to refer to the work of Aparárka, when citing opinions without naming the source from which he derives them.[3]

The Mitákshará of Vijnánéswara, a celebrated ascetic, who is supposed to have resided in the north of India[4], is a gloss on

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[1] Deslongchamps supposes the author to be the same as Raghunandana. मानवं धर्म्मशास्त्रं ॥ Avertissement, pp. xi. xvi.

[2] Steele's Summary of the Laws and Customs of Hindoo castes, pp. 1, 2. The former of the two works above mentioned is probably the Parásara Mádhavíya, which will be presently noticed; at any rate the Mádhava and Sáyana, spoken of by Steele, are the learned minister of Bukka Raya, king of Vijayanagar, and his brother the Commentator on the Védas.

[3] Ellis on the Law-books of the Hindus, p. 21.

[4] The Mitákshará is, however, sometimes claimed as a production of the south, and, at any rate, must have been brought there at a very early period. See Ellis, op. cit. p. 23.

the Yájnavalkya Dharma Shástra. It abounds, however, with apposite quotations from other legislators, and expositions of these quotations, as well as of the text it professes to illustrate: thus it combines the utility of a regular Digest with its original character; and it is referred to, and used for the same purposes as the professed Digests. Vijnánéswara, in his important work, follows the arrangement of the Yájnavalkya Dharma Shástra, and has divided his Comment into three parts: the first treats of duties, established rules, or ordinances; the second, of the laws and customs of the people, that is, of private contests and administrative law; and the third, of purification, the orders of devotion, penance, &c.[1]

The Mitákshará of Vijnánéswara is one of the greatest, and, indeed, if we take into consideration the extent of its influence, the greatest of all the Hindú law authorities; "for it is received," as Colebrooke observes, "in all the schools of Hindu law, from Benares to the southern extremity of the peninsula of India, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent. The works of other eminent writers have, concurrently with the Mitácshará, considerable weight in the schools of law which have respectively adopted them; as the Smriti Chandricá in the south of India; the Chintámani, Retnácará, and Viváda Chandra in Mithilá; the Víramitródaya and Camalácara at Benares; and the Mayúcha among the Mahrattas. But all agree in generally deferring to the authority of the Mitácshará, in frequently appealing to its text, and in rarely, and at the same modestly, dissenting from its doctrines on particular questions."[2] The Mitákshará must thus be considered *as the main authority for all the schools of Law, with the*

[1] Mr. Borradaile has given a translation of the Index to the Mitákshára at the end of the first volume of his Bombay Reports (p. 455), but it comprises only the first and second books; the Index to the last book being designedly omitted, as being rarely consulted.—Borradaile's Reports of Causes adjudged by the Sudur Udalut of Bombay, Vol. I. Pref. p. v. fol. Bomb. 1825.

[2] Colebrooke's two Treatises on the Hindu Law of Inheritance, Pref. p. iv.

sole exception of that of Bengal.[1] The actual time when Vijnánéswara composed his great work is not precisely ascertained; but, according to Colebrooke, its antiquity exceeds five hundred, and falls short of a thousand years.

The Mitákshará is, as has been already observed, a Comment on the text-book of Yájnavalkya; but it, in its turn, has been commented upon by various writers, and it will be most convenient to notice these Commentaries along with the work which they profess to illustrate. Colebrooke[2] mentions four Commentaries on the Mitákshará, but describes only two; one entitled the Subódhiní by Visvésvara Bhatta, and another by a modern author, Bálam Bhatta. The Subódhiní is a collection of notes illustrating the obscure passages concisely but perspicuously: Bálam Bhatta's work is in the form of a perpetual comment, expounding the original word by word: he in general follows the Subódhiní so far as it extends. Nanda Pandita is mentioned by Sutherland as the author of a Commentary on the Mitákshará, entitled Pratitákshara.[3]

Various editions of the original text of the Mitákshará have been published.[4] A translation into Bengalí of the Second Book, appeared at Calcutta in the year 1824[5], and a Hindí translation

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[1] Patábhi Ráma Shastri, from whom Mr. Ellis drew largely in compiling his excellent treatise on the law-books of the Hindús, admitted that the Mitákshará of Vijnánéswara was the most generally prevailing authority, but stated, also, that in the Andra country the Smriti Chandrika and Sarasvati Vilása were chiefly esteemed; in the Dravida, the Sarasvati Vilása and Varadarájya; and in the Karnátaka, the Mádhavíya and Sarasvati Vilása. Ellis, on the Law-Books of the Hindus, p. 25.

[2] Colebrooke's two Treatises on the Hindu Law of Inheritance, Pref. p. ix.

[3] Sutherland's two Treatises on the Hindu Law of Adoption. Pref. p. ii.

[4] श्रीपद्मनाभभट्टोपाध्यायात्मजश्रीमत्परमहंसपरिव्राजकविज्ञानेश्वरभट्टारकस्यकृतिः ऋजुमिताक्षरा याज्ञवल्क्यधर्मशास्त्रविवृतिः ॥ Calcutta 1812. विज्ञानेश्वराचार्यसंगृहीतः मिताक्षराव्यवहाराध्यायः The Mitákshará: A Compendium of Hindú Law; by Vijnánéswara founded on the text of Yájnavalkya. The Vyavahára section, or Jurisprudence, edited by Sri Lakshmi Náráyaná Nyayalancára. 8vo. Calcutta, 1829.

[5] मिताक्षरादर्पणं The Mitákshará Dorpana, translated from the Sungscrit into the Bengali Language, by Lukshmi Narayan Nyayalankar. 8vo. Calcutta, 1824.

of the chapter on inheritance was published at the same place in 1832.[1] Its most important portion, viz. the sixth chapter which treats of inheritance, has been translated by Colebrooke[2]; it is impossible to rate too highly the utility of this translation, the learned author having accompanied it by elucidatory annotations and glosses from his own pen, and drawn from those numerous sources to which his peculiar opportunities and immense erudition gave him a ready access; every page bears testimony to his diligence in collecting materials, to his judgment in their selection, and to his learning in their interpretation. M. Orianne has also translated the chapter on inheritance from the Mitákshará.[3]

Sir William Hay Macnaghten, whose melancholy and violent death is fresh in the memory of all as being one of the earliest of the series of disastrous events that occurred during our first campaign in Afghanistán, devoted a large portion of his time to the successful cultivation of the native laws. Amongst other valuable works on this subject, he has left a translation of the Vyavahára Mátrika Prakrana, treating of the administration of justice, and including the Law of Evidence and Pleading: this forms the first portion of the second book of Vijnánésvara's work.[4]

In addition to the Commentaries on the Yájnavalkya Dharma Shástra by Aparárka and Vijnánéswara above noticed, there are extant Comments by Dévabódha and Visvarúpa, and one by Súlapáni, entitled the Dípakaliká, a

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[1] दायभागः। The Law of Inheritance translated from the Sanscrit of the Mitákshará into Hindí, by Daya Sánkara. 8vo. Calcutta, 1832.

[2] Two Treatises on the Hindu Law of Inheritance, translated by H. T. Colebrooke. 4to. Calcutta, 1810.

[3] Traité original des successions d'après le Droit Hindou, extrait du Mitacshara de Vijnanéswara, par G. Orianne. 8vo. Paris, 1844.

[4] Detached portions of this translation first appeared in the Considerations on the Hindú Law, by Sir Francis Macnaghten, and the whole was afterwards presented, in a complete state and connected form, in the Principles and Precedents of Hindú Law, by his talented son: both these works will be presently described.

modern and succinct gloss, which is in deserved repute with the Gauriya school.[1]

The text-book in verse attributed to Yama, brother of the seventh Menu, has been illustrated by a commentary from the pen of Kullúka Bhatta, the author of the celebrated gloss on the Mánava Dharma Shástra.

Nanda Pandita is the author of a Comment on the Parásara Smriti.

The Mádhavíya of Vidyáranyasvámi, named after Mádhava Achárya, the brother of its author, is very generally received as an authority with the southern schools, but especially in the Karnátaka country. It is formed on the basis of the Parásara Smriti, on which it is professedly a Comment: but as in this Smriti the second book, which ought to comprise the legal Institutes, is wanting, Vidyáranyasvámi has been forced to select a verse of the general import that princes are enjoined to conform to the dictates of justice, upon which to raise his superstructure, explaining what that justice is. Thus in fact, though not in name, the Mádhavíya becomes a digest of the law prevalent in the southern portion of the peninsula. Vidyáranyasvámi was the virtual founder of the Vidyánagara empire, and his work became the standard of its law, as well as being of some authority in the Benáres school. It is ascertained that the author of the Mádhavíya wrote about the middle of the fourteenth century.

The text book of Gautama was commented upon by Haradattáchárya, who resided in Dravida, and who is famous for his other compositions: his work, in which he occasionally quotes from other Smritis, is called Mitákshará, and must not be confounded with the treatise of Vijnánéswara.

The Varadarájya, by Varadarája, who also resided in the south of India, and was a native of the Súbah of Arcot, is in fact a general Digest; but it may be placed among the Commentaries, since it is framed principally on the Nárada Smriti. It is a work of great authority in the southern schools, and especially in the Dravida country.

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[1] Colebrooke's Digest of Hindu Law. Vol. I. Pref. p. xvi. 2d edit.

There is a general and concise Commentary and Abridgement of the Smritis which is entitled the Chatur Vinsati Smriti Vyákhya.

III. The Nibandhana Grantha, or Digests properly so called, are the third chief authority of Hindú law. These Digests are either general or treat of particular and distinct portions of the Law, and consist of texts taken from the Smritis, with explanatory glosses, reconciling their apparent contradictions, in order to fulfil the precept of Menu—"When there are two sacred texts apparently inconsistent, both are held to be law, for both are pronounced by the wise to be valid and reconcileable.[1]

The following account of the Digests might perhaps have included the names of other treatises; but it has been my object, whilst endeavouring to make it as complete as possible, to exclude all those works which do not relate to Vyavahára or jurisprudence: they have been arranged, where practicable, with relation to the schools of law in which they chiefly obtain; but it must be borne in mind that many of them, in common with several of the glosses and commentaries above mentioned, are of less authority than others, and that in many cases their names even may not often be heard in an Indian Court of Justice.

The Dharma Ratna of Jímúta Váhana is a digest of the law according to the Gauriya school; the chapter on Inheritance, the celebrated Dáya Bhága is extant, and is the standard authority of the law in Bengal. This treatise is on almost every disputed point opposed to the Mitákshará; and it is, indeed, in this very branch of the law, viz. Inheritance, that we find the greatest difference in doctrine in the various schools. Jímúta Váhana probably lived and wrote between the age of Vijnánésvara and that of Raghunandana, the latter of whom is known to have flourished at the beginning of the

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[1] Menu B. ii. v. 14. It should be remarked, however, that this applies only to 'sacred texts,' and proceeds from the impossibility of supposing either to be wrong. It does not apply to conflicting laws in general; on the contrary, any law incongruous with the Code of Menu is declared invalid.—Mill's History of India, by Wilson. Vol. I. p. 246, note.

sixteenth century. The Dáya Bhága is the more especially worthy of notice, on account of its being the work of the founder of the Gauriya school.

Two editions of the text of the Dáya Bhága, together with the commentary of Sríkrishna Tarkálankára have appeared at Calcutta, the former in the year 1813 and the latter in 1829:[1] a translation in Prakrit was published at Calcutta in 1816.[2]

The translation of Jímúta Váhana's chapter on Inheritance by Colebrooke is the first of the two treatises on Inheritance published by that eminent scholar and lawyer, the Mitákshará being the second. This version of the Dáya Bhága is annotated, commented upon, and illustrated with equal ability and learning.

The earliest Commentary upon the Dáya Bhága is that of Srínátha Áchárya Chúdámani, which is characterised by Colebrooke as, in general, a very excellent exposition of the text.[3] The next in order of time is the gloss of Achyuta Chakravartí (author also of a Commentary of the Sraddha Vivéka): it cites frequently the gloss of Chúdámani, and is itself quoted by Mahésvara: this last is posterior in date to the Commentaries by Chúdámani and Achyuta, and probably anterior to that of Sríkrishna Tarkálankára, which will be presently noticed, though the two seem to be nearly contemporary. The Commentary of Mahésvara differs greatly from the interpretation furnished by Sríkrishna, both in meaning and in the manner of deducing the sense; but neither author seems to have been acquainted with the other's work.

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[1] श्रीकृष्णतर्कालङ्कारकृतटीकासहितःश्रीजीमूतवाहनकृतो दायभागः॥ 4to. Calcutta, 1813. दायभागः॥ Dáya Bhága, or Law of Inheritance, by Jímúta Váhana, with a Commentary by Krishna Tarkálankára. 8vo. Calcutta, 1829.

[2] दायभागः॥ Dáyabhága, or Partition of Heritage, being a translation from the original Sanscrit in the Prakrit Bhasa. To which is added the Hindoo law, containing various useful information on affairs of general importance, together with the Munee Buchuns of the Sanscrit. 8vo. Calcutta, 1816 Bengálí type.

[3] Colebrooke's two Treatises on the Hindu Law of Inheritance. Pref. p. vi.

The Commentary by Sríkrishna Tarkálankára is the most celebrated of all the treatises explanatory of the text of the Dáya Bhága. Colebrooke says: "It is the work of a very acute logician, who interprets his author and reasons on his arguments with great accuracy and precision, and who always illustrates the text, generally confirms its positions, but not unfrequently modifies or amends them. Its authority has been long gaining ground in the schools of law throughout Bengal, and it has almost banished from them the other expositions of the Dáya Bhága, being ranked in general estimation next after the treatises of Jímúta Váhana and of Raghunandana.[1] This Commentary has been chiefly and preferably used by Colebrooke in his translation. Another gloss of the text is mentioned by Colebrooke as bearing the name of Raghunandana, but he does not consider it as genuine. Rámanátha Vidyá Váchaspati is also said to have written a Commentary on the Dáya Bhága.

Sríkrishna Tarkálankára has written a good epitome of the Law of Inheritance entitled Dáya Krama Sangraha, which, though professedly an original work, agrees throughout with the learned writer's commentary on the Dáya Bhága.

The text of the Dáya Krama Sangraha has been edited, with an English translation, by Mr. Wynch[2], and was also published separately at Calcutta in the year 1828.[3]

The Smriti Tatwa of Raghunandana Vandyaghatíya, the greatest authority of law in the Gauriya school, is a complete Digest, in twenty-seven volumes, and is described by Goverdhen Kál as "the grandest repository of all that can be known on a subject so curious in itself, and so interesting to the British Government."[4] This great writer, who, as I have already

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[1] Colebrooke's two Treatises on the Hindu Law of Inheritance. Pref. p vi.

[2] The Dáya Crama Sangraha, an original Treatise on the Hindoo Law of Inheritance, translated by P. M. Wynch. Fol. Calcutta, 1818. This edition is accompanied by the Sanscrit text printed in Bengálí type.—

[3] श्रीकृष्णतर्कालंकारभट्टाचार्यकृतो दायाधिकारक्रमसंग्रहः Dáya Krama Sangraha, a Compendium of the Order of Inheritance, by Krishna Tarkálankára Bhattác'árya; edited by Lakshmi Náráyan Serma. 8vo. Calcutta, 1828.

[4] Asiatic Researches, Vol. I. p. 352. 5th edit.

mentioned, lived in the beginning of the sixteenth century, was a pupil of Vásudéva Sárvabhauma: he is often cited by the name of Smártabhattáchárya.

The Dáya Tatwa, or that portion of the Smriti Tatwa of Raghunandana which relates to Inheritance, is highly spoken of by Colebrooke, who says: "It is indeed an excellent compendium of the law, in which Jímúta Váhana's doctrines are in general strictly followed, but are commonly delivered in his own words, in brief extracts from his text. On a few points, however, Raghunandana has differed from his master, and in some instances he has supplied deficiencies."[1]

Káshiráma has written a Commentary on the Dáya Tatwa of Raghunandana which is useful, and nearly agrees with the views taken by Sríkrishna in his interpretation of the work of Jímútá Váhana.

The whole work of Raghunandana was published in the original at Serampore in the years 1834—35, and again at Calcutta about the year 1840.[2] The text of the Dáya Tatwa was also published at Calcutta in the year 1828[3]; and the text of the Vyavahára Tatwa of the same author appeared at the same place in the same year.[4]

The Dáya Rahasya or Smriti Ratnávalí, by Rámanátha Vidya, is of considerable authority in some districts of Bengal; but though a work of merit, it differs both from Jímúta Váhana and Raghunandana, and thus tends to create uncertainty.

The Dvaita Nirnaya of Váchaspati Bhattáchárya, a treatise on general law, and the Dáyá Nirnaya of the same author, which treats of inheritance, the latter being little more than an

[1] Colebrooke's two Treatises on the Hindu Law of Inheritance. Pref. p. vii.

[2] श्रीरघुनंदनविरचितानि अष्टाविंशति तत्वानि॥ 2 Vols. 8vo. Serampore, 1834. महामहोपाध्याय वयघटीयस्मार्त्तश्रीरघुनंदनभट्टाचार्यकृतानि तत्वानि अभिवादी चरण-वंशोपाध्यायेन कलिकातनागरे मुद्रांकितानि॥ Obl. Fol. Calcutta, *Circa* 1840—45.

[3] दायतत्त्वं Dáya Tatwa, a Treatise on the Law of Inheritance, by Raghunandana Bhattáchárya, edited by Lakshmi Naráyan Sermá. 8vo. Calcutta, 1828.

[4] वयवहारतत्त्वं Vyavahára Tatwa, a Treatise on Judicial Proceedings, by Raghunandana Bhattáchárya. Edited by Lakshmi Náráyan Serma. 8vo. Calcutta, 1828.

abridgment of the Dáya Bhága and Dáya Tatwa, are also Bengal authorities.

Késava Misra, a native of Mithila, is the author of the Chhandóga Parisishta and the Dvaita Parisishta: the former, together with its commentary, the Parisishta Prakása, are works of great authority, and treat of the duties of priests: the latter is a more general treatise.

The Viváda Ratnákara, a general digest compiled under the superintendence of Chandéswara, Minister of Harasinhadéva, King of Mithila, and who was himself the author of other law tracts; the Viváda Chintamani, the text of which was published at Calcutta in the year 1837[1]; the Vyavahára Chintamani; and the other works of Vachespati Misra, commonly cited by the name of Misra, are all considered as great authorities in Mithila; as are likewise the Viváda Chandra, and other treatises by the learned lady Lachimádéví, who wrote under the name of her nephew, Misaru Misra. Sri Karáchárya, and his son Srínátháchárya, were also celebrated in the Mithila school of law; the former as the author of a treatise on inheritance; the latter, of the Áchárya Chandriká, a tract on the duties of the fourth class.

The Smritisára, or Smrityarthasara, by Sridharáchárya, a treatise on religious duties, but mentioning civil matters incidentally, is according to the Mithila school: it quotes the Pradipa, Kalpadruma, and Kalpalatá, works otherwise unknown. There seem to be several Smritisáras. Sir. W. Macnaghten mentions one by Harináthopadhyaya, which is of authority in Mithila[2]; and there is another by Yadavendra. The Smriti Samuchchaya, or Smriti Sára Samuchchaya, is also a Mithila authority, and is known amongst the Mahrattas: it is apparently a short work.

The Madana Párijáta, a treatise on civil and religious duties, by Visvésvara Bhatta, but containing a chapter on inheritance, is likewise a Mithila work, and prevails also in the Mahratta country: it quotes the Sáparárka, the Smriti Chandrika, and

[1] विवादचिंतामणिः श्रीवाचस्पतिमिश्रविरचितश्च ॥ 8vo. Calcutta, 1837.

[2] Principles and Precedents of Hindu Law, Vol. I. Pref. p. xxii.

the Hémadri. This work was composed by order of Madana Pála, a prince of the Játh race, and is sometimes cited in his name. Sir W. Macnaghten calls the author Madanopadhyáya.

Súlapáni, a native of Mithila, who wrote a commentary on the Mitákshará, already noticed, is also the author of a treatise on penance and expiation, which is consulted as an authority both in Bengal and Mithila.

The Víramitrodaya of Mitra Misra is a treatise on Vyavahára in general according to the doctrines of the Benáres school, and systematically examines and refutes the opinions laid down by Jímúta Váhana and Raghunandana.[1]

The Sanskrit text of the Víramitrodaya was printed at Calcutta in 1815.[2]

The Viváda Tándava of Kamalákara, younger brother of Dinakara Bhatta, and son of Ramakrishna Bhatta, is on the same side of the argument, and defends the doctrines of Vijnánésvara in opposition to the writers of the Gauriya school.

The Nirnaya Sindhu is a modern work, but of considerable authority at Benares, as well as amongst the Mahrattas: it treats principally of rites and ceremonies, touching incidentally only on questions of a legal nature. The author is Kamalákara.

The original text of the Nirnaya Sindhu was published at Calcutta in the year 1833.[3]

Neither Mitra Misra nor Kamalákara differ from the Mitákshará on any important point.

The Vyavahára Mayúkha of Nílakantha is the greatest authority, after the Mitákshará, in the Maharashtra school, and is one of the twelve treatises by the same author, all bearing the same title of Mayúkha, and treating of religious duties, rules

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[1] Steele mentions another work bearing nearly the same title, but so disfigured by his barbarous orthography as to be uncertain. He calls it *Wyuwhar Mitrode*, and says it was composed by a Gaura Brahman of Bengal, 200 years since, and that it is of general notoriety. Summary of the Law and Custom of Hindoo Castes, p. 14.

[2] वीरमित्रोदयाख्यधर्मशास्त्रं ॥ 4to. Calcutta, 1815.

[3] श्रीकमलाकरभट्टविरचितं निर्णयसिंधुनामकं धर्मशास्त्रं ॥ 4to. Calcutta, 1833.

of conduct, penance, and expiation, &c. The whole of the Mayúkhas are designated collectively the Bhagavat Bháskara. The Vyavahára Mayúkha, which is the sixth in the list, is devoted exclusively to law and justice, and is a general digest, or collection of texts, without much commentary, especially in the latter chapters. Little or nothing is known of the author, Nílakantha, beyond that he was of a family of Deshast Brahmans, and it is generally reported that his work was composed about a hundred and fifty years since.

An edition of the text of the Vyavahára Mayúkha was published at Bombay in the year 1826, by order of the Government.[1]

Mr. Borradaile, late of the Bombay Civil Service, and a Judge of the Sudder Dewanny Adawlut, the author of the valuable Bombay Reports, has published a translation of the Vyavahára Mayúkha, to which he has affixed annotations referring to passages of other works on Hindú law, and rendering his version of peculiar utility to the student of the law of that side of India.[2]

The Smriti Kustubha, by Ananda Déva Kasikar, a Kokunust Chitpawani Brahman, was compiled by desire of Baj Bahádur, otherwise called Chandra Déva. It is one of twelve works bearing the title of Kustubha, all of which are to be met with at Benáres: it is known at Poonah, and treats of Áchára, Vyavahára, and Práyaschitta.

The Hémádri, by Hémádri Bhatta Kasikar, is a general Digest of some antiquity, containing twelve divisions, and is of authority on the Bombay side of India.

The following works are mentioned by Steele as of authority in the Mahratta country.

The Dyot, by Gaga Bhatta Kasikar, a Deshast Brahman, was written about a century ago: it comprises twelve divisions, and treats of all subjects.

The Pursuram Prutap was composed by order of Sabají

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[1] श्रीशंकरभट्टात्मजभट्टनीलकंठकृते भगवद्भास्करे व्यवहारमयूखे ॥ 4to. Bombay, 1826.

[2] The Vyuvuharu Muyookhu, translated from the original by Harry Borradaile. 4to. Surat, 1827.

Pratap, Raja of the eastern Telinga country, about five hundred years ago. It is a general Digest.

The Prithí Chandród is also a general Digest treating of Áchára, Vyavahára, and Práyaschitta.

The Vyavahára Sekar, by Nagojee Bhatta, a Deshast Brahman of Benáres, is a work of general notoriety.

The Sar Sangraha is a work treating of Práyaschitta Smárta, Vyavahára, &c.; but not fully.

The Madana Ratna, by Madana Singh, a Brahman of Hindústán, is a treatise on Áchára, Vyavahára, and Práyaschitta of notoriety.

The Achararka, by Sunkur Bhatta Kasikar, is a work on Áchára and Vyavahára of general notoriety.

The Sarasvati Vilása, a general Digest, attributed to the King Pratáparúdra Déva, of the Kakateya family, but most likely compiled under his direction, is one of the chief authorities, after the Mitákshará, in the whole of the southern portion of India. It was the standard law-book of his dominions, which comprehended the entire Andra country, and is still a book of great authority to the northward of the Pennar, where many customs exist, particularly regarding land tenures, which are derived from it; but it is even there, in some measure, subordinate to the authority of the Mitákshará.

The Smriti Chandriká, by Devanda Bhatta, and which has been supposed by Colebrooke, who mentions it in terms of great praise, to have been the basis upon which the Mádhavíya was formed by Vidyáranyasvámi, is a general and excellent treatise according to the doctrine of the Dravida school. This, as well as the preceding work, is of high authority in the Andra country.

A Tamil abridgment of the Smriti Chandriká was published at Madras in the year 1826.[1]

The Dhárésvariya is mentioned by Ellis as a general Digest, which, though written by an author supposed to have lived

[1] An Abridgment, in the Tamil language, of the Smriti Chandricá, a treatise on the Municipal Law of the Hindús. By Madura Condaswámi Pulaver. Fol. Madras, 1826.

in the north of India, yet is received as an authority in the south.

Several writers have composed treatises especially devoted to the Law of Adoption; of these the Dattaka Mímánsá of Nanda Pandita, the author of the Vaijayanti, and the Pratitákshara, already noticed, is the most esteemed Sutherland, in describing this work, says: "The Dattaka Mímánsá, as its name denotes, is an argumentative treatise, or disquisition, on the subject of Adoption; and though, from the author's extravagant affectation of logic, the work is always tedious, and his arguments often weak and superfluous; and though the style is frequently obscure, and not unrarely inaccurate, it is, on the whole, compiled with ability and minute attention to the subject, and seems not unworthy of the celebrity it has attained."[1]

The Dattaka Chandriká by Devanda Bhatta, the author of the Smriti Chandriká, is a concise treatise on Adoption of great authority, and is supposed to have been the basis of Nanda Pandita's more elaborate work.

An edition of the text of the Dattaka Mímánsá, and the Dattaka Chandriká appeared at Calcutta in 1817.[2]

The Dattaka Mímánsá, and the Dattaka Chandriká, have been admirably translated by Sutherland; and the synopsis of the Law of Adoption, which he has appended to his work, though succinct, is eminently useful.[3] A French translation of the Dattaka Chandriká, by M. Orianne, also appeared in the year 1844.[4]

In addition to these treatises, Ellis mentions the Datta Mímánsá by Vidyáranyasvámi, the Datta Chandriká by Gangadéva Vazhey, the Datta Dípaka by Vyásáchárya, the Datta

[1] Sutherland's two Treatises on the Hindu Law of Adoption, Pref. p. ii.

[2] दत्तकमीमांसा दत्तकचंद्रिका ॥ 8vo. Calcutta, 1817.

[3] The Dattaka Mímánsá and Dattaka Chandriká, two original treatises on the Hindu Law of Adoption, translated from the Sanscrit by J. C. Sutherland. 4to. Calcutta, 1821.

[4] Traité original des successions d'après le droit Hindou, suivi d'un autre Traité sur l'Adoption, le Dattaca-Chandrica de Devandha-Bhatta. Par G. Orianne. 8vo. Paris, 1844.

Kustabha by Nagóji Bhatta, and the Datta Bháshana by Krishna Misra, as general Digests of the Law of Adoption.[1] He however gives no description of these works, and I do not find them spoken of by other writers on the subject. Sir Francis Macnaghten also speaks of a treatise on Adoption called the Dattaka Nirnaya, as the compilation of a celebrated Pandit of the name of Sri Natha Bhatta.[2]

The Law of Adoption does not exhibit much conflict of doctrine between the several schools, although some differences of opinion may be observed amongst the individual writers. It must be remarked, however, as an important distinction, that although the Dattaka Mímánsá and Dattaka Chandrika are equally respected all over India, yet where they differ, the doctrine of the latter is adhered to in Bengal, and by the southern Jurists; while the former is held to be the infallible guide in the provinces of Mithila and Benáres.[3]

Heláyudha, who is supposed to have flourished more than seven hundred years since, is the author of the Nyáyá Sarvaswa, the Brahmana Sarvaswa, and the Pandita Sarvaswa, as well as of other tracts on the administration of justice and the duties of cast.

Lakshmídhara wrote a treatise on the administration of justice, and also a Digest entitled Kalpataru, which is often cited.

Narasinha, son of Ramachandra, is the author of the Góvindárnava and other law tracts.

Jítendriya is often cited in the Mitákshará, and in the Digest of Jagannátha Terkapanchánana.

Since the establishment of the British empire in India, three several Digests of the Hindú law have been composed by native authors. The first, the Vivádárnava Sétu, was compiled by order of Warren Hastings; the second, the Viváda Sárárnava was written, at the request of Sir William Jones, by Serváru

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[1] Ellis, on the Law Books of the Hindus, pp. 21, 22.

[2] Considerations on the Hindoo Law as current in Bengal, Pref. p. xiii.

[3] Macnaghten, Principles and Precedents of Hindu Law, Vol. I. Pref. p. xviii.

Trivédí, a Mithila lawyer; and the third and most celebrated, is the Vivâda Bhangárnava of Jagannátha Terkapanchánana, which has become generally known by the translation of the learned Colebrooke.

The first of these works was proposed as early as the 18th of March 1773, at the opening of the Court of Sudder Dewanny Adawlut of Bengal[1]; and in December in the same year it was reported to the President that the Digest was nearly completed in the Sanskrit language, and that a translation was being made into Persian for the purpose of being again translated into English. Early in the following year Warren Hastings transmitted a specimen of the English version[2] to the Court of Directors; and in the same year Mr. Halhed published the entire work in English, under the title of "A Code of Gentoo Laws."

The letter from Sir William Jones to the Supreme Council of Bengal, already quoted, at once describes and condemns this Code. "It consists," says the learned Judge, "like the Roman Digest, of authentic texts, with the names of their several authors regularly prefixed to them, and explained where an explanation is requisite, in short notes, taken from Commentaries of high authority. It is, as far as it goes, a very excellent work; but though it appears extremely diffuse on subjects rather curious than useful, and though the chapter on Inheritance be copious and exact, yet the other important branch of jurisprudence, the Law of Contracts, is very succinctly and superficially discussed, and bears an inconsiderable proportion to the rest of the work. But whatever may be the merit of the original, the translation of it has no authority, and is of no other use than to suggest inquiries on the many dark passages we find in it. Properly speaking, indeed, we cannot call it a translation; for though Mr. Halhed performed his part with fidelity, yet the Persian interpreter had supplied him only with a loose, injudicious epitome of the original

[1] Proceedings of the Governor and Council at Fort William respecting the Administration of Justice amongst the Natives in Bengal, p. 33, 4to. 1774.

[2] Ib. p. 37 *et seq.*

Sanscrit, in which abstract many essential passages are omitted; though several notes of little consequence are interpolated, from a vain idea of elucidating or improving the text."[1]

The letter from which the above extract is taken proposed to the Government the compilation of a new Digest, which was to be confined to the Laws of Contracts and Inheritances, and to be based upon the great work of Raghunandana. The result of this proposition, which was gladly accepted by the Governor-General and the Members of Council, was the composition of the Viváda Sárárnava and the Viváda Bhangárnava. Sir W. Jones had himself undertaken a translation of these works, together with an introductory discourse, for which he had prepared "a mass of extremely curious materials[2]," when the hand of death arrested his labours.

The Viváda Bhangárnava, by Jagannátha Tarkapanchánana[3], was, as above stated, compiled by its author at the suggestion of Sir W. Jones, and after his death was translated by Colebrooke.[4] Like the Viváda Sárárnava, it treats only of the Law of Contracts and Successions, omitting altogether the Law of Evidence, the Rules of Pleading, the Rights of Landlord and Tenant, and other topics, which, to render a Digest more generally useful in those Courts where the English law does not prevail, might have been advantageously inserted.

This Digest consists, like other works of the same nature, of texts selected from writers of authority, and a running com-

[1] Sir W. Jones's Works, Vol. III. p. 76*. 4to. Lond. 1799.

[2] See his last Anniversary Discourse in the Asiatic Researches, Vol. VI. p. 168. 4th Edit.

[3] Jagannátha Tarkapanchánana was living in the year 1815, at the advanced age of 108 years, and resident at Tirveni, about thirty miles from Calcutta, where, surrounded by four generations of his descendants, in number nearly an hundred, he gave daily lectures to his pupils upon the principles of law and philosophy.—Harington's Analysis of the Bengal Regulations, Vol. I. p. 197, note. 2d Edit.

[4] A Digest of Hindu Law on Contracts and Successions, with a Commentary by Jagannátha Tercapanchánana. Translated from the original Sanscrit by H. T. Colebrooke. 4 Vols. Fol. Calcutta, 1797. 2d Edit. 3 Vols. 8vo. London, 1801. It is to this latter edition that I have referred in the notes.

mentary by Jagannátha, generally taken from former ones, and frequently containing frivolous disquisitions. The arrangement of the work renders its use inconvenient in the extreme; and it has been not inaptly characterised as "the best book for a counsel and the worst for a judge." Colebrooke himself almost disclaims it. In the Preface to the translation of the treatises on Inheritance he says: "And, indeed, the author's method of discussing together the discordant opinions maintained by the lawyers of the several schools, without distinguishing, in an intelligible manner, which of them is the received doctrine of each school, but, on the contrary, leaving it uncertain whether any of the opinions stated by him do actually prevail, or which doctrine must now be considered in force, and which obsolete, renders his work of little utility to persons conversant with the law, and of still less service to those who are not versed in Indian jurisprudence, especially to the English reader, for whose use, through the medium of a translation, the work was particularly intended."[1]

The doctrines maintained by Jagannátha are taken commonly from the Bengal school, and sometimes originate with himself; in which latter case, of course, they are not to be considered as of paramount authority: but at the same time he ought not to be held responsible when his work is cited, as, it seems, was frequently done in former times by the southern Pandits, in opposition to the opinions maintained by the abler authors of the Mitákshará, the Smriti Chandriká, and the Mádhavíya. Colebrooke's regret, that the Pandits of the south of India had thus been furnished with means of adopting, in their answers, whatever doctrine might happen to be in accordance with the bias they might have contracted[2], cannot be received as a condemnation of Jagannátha's work, but only of a venal practice of the law-officers of the southern Courts, which should have been discountenanced at the outset. Notwithstanding the unfavourable opinion of the Viváda Bhangárnava pronounced by its learned translator, and al-

[1] Colebrooke's two Treatises on the Hindu Law of Inheritance, Pref. p. ii.
[2] Colebrooke in Strange's Hindu Law, Vol. II. p. 176. 2d edit.

though this opinion is certainly, in a great measure, justified by the work itself, there is no doubt but that it contains an immense mass of most valuable information, more especially on the Law of Contracts, and will be found eminently useful by those who will take the trouble of familiarizing themselves with the author's style and method of arrangement.

In addition to these three general Digests may be mentioned the Vyavastháratnamálá by Srí Lakshmí Náráyana Nyáyálankára. It is a modern work, modelled after the European plan of a Catechism, written in the form of questions and answers, in the vernacular language of Bengal, with quotations in Sanskrit from books of established authority, adduced in support of the principles advanced. The work of Srí Lakshmí Náráyana contains a succinct view of the law of inheritance according to the doctrines of Jímútá Váhana contrasted with those of the Mitákshará, together with a short treatise on Adoption. This work was published at Calcutta in 1830.[1]

I have now, I think, described, if not the whole of the Hindú law-books now extant, all those which treat of Vyavahára, and which are alone applicable to the Hindú law as administered in British India. It remains to recapitulate the names of such works as are usually referred to as final authorities in the different schools, excluding the text-books and mere explanatory comments. They are as follows:—

1. Gauriya, or Bengal school.—Dharma Ratna. Dáya Bhága, and its Commentaries by Sríkrishna Tarkálankára, and Srínátha Áchárya Chúdámani. Dáya Krama Sangraha. Smriti Tatwa. Dáya Tatwa. Vivádárnava Sétu. Viváda Sárárnava. Viváda Bhangárnava.
2. Mithila school.—Mitákshará. Viváda Ratnákara. Viváda Chintámani. Vyavahára Chintámani. Dwaita Parisishta. Viváda Chandra. Smriti Sára. Samuchchaya. Madana Parijáta.
3. Benáres school.—Mitákshará. Víramitrodaya. Mádhavíya. Viváda Tandava. Nirnaya Sindhu.

[1] श्रीलक्ष्मीनारायणन्यायालंकारविरचितव्यवस्थारत्नमाला ॥ 8vo. Calcutta, 1830.

4. Maharashtra School.—Mitákshará. Mayúkha. Nirnaya Sindhu. Hémadri. Smriti Kustubha. Mádhavíya.
5. Drávida School.—
   (*a*) Drávida division.—Mitákshará. Mádhavíya. Sarasvati Vilása. Varadarájya.
   (*b*) Karnátaka division.—Mitákshará. Mádhavíya. Sarasvati Vilása.
   (*c*) Andra division.—Mitákshará. Mádhavíya. Smriti Chandriká. Sarasvati Vilása.

In questions of Adoption the Dattaka Mimánsá is preferred in Bengal and in the south; the Dattaka Chandriká in Mithila and Benáres.

It must not be inferred that these are all the works cited by the lawyers of the several schools, but that they are those quoted most frequently: nor, again, must it be concluded that they are *all* constantly referred to in the Law Courts. Borradaile says, that on the Bombay side of India, three books alone were mentioned by the Shastrís as authorities in his time; viz. Menu, the Mitákshará, and the Mayúkha[1]; and Colebrooke states that in Benáres the ordinary phraseology of references for law opinions of Pandits from the native Judges of Courts established there, previous to the institution of Adawluts superintended by English Judges and Magistrates, required the Pandit, to whom the reference was addressed, "to consult the Mitákshará," and report the exposition of the law there found applicable to the case propounded.[2]

Lastly, It must be distinctly remembered, that no work of the Bengal school can be considered to be concurrent or interchangeable with the writings which prevail in the other schools, or of any authority out of the limits where the Bengálí is the language of the people, with the exception however, already noticed, regarding the Law of Adoption; and that, although the works above enumerated, not being according to the Bengal school, are, for the most part, only quoted in those schools under which they are arranged, there seems to be no reason

[1] Borradaile's Bombay Reports, Pref. p. iii.
[2] Colebrooke in Strange's Hindu Law, Vol. I. p. 317. 2d Edit.

why such works might not be received as authorities indiscriminately in Mithila, Benáres, and the Mahratta and Drávida countries, but of course being of greater or less weight according to the custom of the countries.

Before I proceed to the description of the fourth class of works on Hindú law, which I have already alluded to, viz. those by European authors, I may mention two modern native compilations which cannot with propriety be ranged under any of the preceding heads. They are collections of opinions compiled from the Dáya Bhága and other works, and seem to correspond with the books of *Fatwas*, which form so considerable a portion of the Muhammadan legal literature: the authors of these collections are Ramjeeyn Tarkálankára, and Lakshmí Náráyana Nyáyálankára.[1] I have never seen these compilations, but they are mentioned in a Letter from the Bengal Government to the Court of Directors, dated the 22d of Feb. 1827, as being among the works encouraged or patronised by the Government.[2]

It must be acknowledged that the method pursued by the Hindú writers on jurisprudence is often very obscure, and always highly uncongenial to European taste; the student will therefore turn with pleasure to the elegant work of Sir Thomas Strange, the sound, though often too severe, criticism of Sir Francis Macnaghten, and the concise and explicit Principles of Hindú Law by his son.

Sir Francis Macnaghten, who was the first writer of an original treatise on Hindú Law, was promoted to the Bench of the Supreme Court at Madras in May 1809, having previously acted as Advocate-General at Calcutta, where, it is said, he had little or no employment except in his official capacity[3]: he

[1] Byabustha Sungruha: a Collection of Opinions compiled by Ramjeeyn Tarkalunkar, from the thirty-six original books of Dayubhagu, &c.; with the authorities of Munoo, &c. Byabustha Sungruhu; or, a Collection of Opinions compiled by Lukshmee Narryana Nyayalunkra, from the original books of Dayabhaga, &c.; with the authorities of Munoo, &c.

[2] Fourth Appendix to the Report from the Select Committee of the House of Commons in 1832, p. 64. 4to. Edit.

[3] Anglo-India, Vol. I. p. 204. 3 Vols. 8vo. London, 1838.

was afterwards, in July 1815, removed to the Supreme Court at Bengal. In the year 1824 he published his Considerations on the Hindú Law[1], which he himself states he commenced and completed in that year. It is a valuable work consisting of an enunciation of principles, illustrated copiously by arguments and decided cases, which are, in most instances, given *in extenso:* the last two chapters are translations from the Mitákshará, and have been already mentioned. The Preface to the Considerations speaks in the most disparaging terms of the Hindú Law, and yet, at the same time, advocates its preservation: it is to be regretted that the whole work is pervaded by a spirit of exaggerated self-estimation and unjust depreciation of every thing not consonant with the author's professional prejudices.

Sir Thomas Strange, who filled successively at Madras the offices of Recorder and first Chief Justice of the Supreme Court of Judicature, published the first edition of his admirable work on Hindú Law in 1825, after several years spent in the collection of materials; and a second and revised edition appeared in 1830.[2] Sir Thomas Strange seems to have possessed most of the qualities which are requisite for an Indian Judge: his disposition was mild, and his manners courteous: and although he had not attained any knowledge of the languages of India, he was imbued with a strong predilection in favour of the natives, and spared no pains, and omitted no opportunity of gaining information on the subject of their laws and institutions. The amiability of his temper is peculiarly evinced by the manner in which he speaks[3] of Sir Francis Macnaghten's severe remarks upon one of his judgments[4], affording a marked contrast to the caustic and arrogant style in which Sir Francis too frequently indulged. The

[1] Considerations on the Hindoo Law as it is current in Bengal. By Sir Francis Macnaghten. 4to. Serampore, 1824.

[2] Hindu Law, principally with reference to such portions of it as concern the Administration of Justice in India. By Sir Thomas Strange. 2 Vols. 8vo. London, 1830.

[3] Strange's Hindú Law, Vol. II. Pref. p. viii. 2d edit.

[4] Considerations on the Hindoo Law, p. 186 *et seq.*

excellent work of Sir Thomas Strange leaves little to desire, so far as regards the Hindú Law of the south of India; whilst the clearness of arrangement, the aptness of the illustrations, and the elegance of its diction, well entitle it to a place by the side of the Commentaries of Blackstone. The cases which the learned author has appended to his work, under the title of "Responsa Prudentûm," are very valuable, and they are rendered still more so by the numerous notes and illustrations which are constantly added by Colebrooke, Sutherland, and Ellis.

The Principles and Precedents of Hindú Law[1], by Sir William Hay Macnaghten, merit the attentive study of all who desire to attain a knowledge of that law: they are clear, concise, and lucid in their order, and the cases given under the title of "Precedents," are of a most important nature. The latter are entitled to great weight, as having been selected, as we are told by the learned author himself, with the utmost care and attention. The whole work was composed, as appears from the Preface, after collecting all the information that could be procured from every quarter, and after a careful examination of all the original authorities, and of all the opinions of the Pandits recorded in the Supreme Court at Calcutta for a series of years. In a late judgment delivered by the Judicial Committee of the Privy Council, Sir W. Macnaghten's work is mentioned as by far the most important authority amongst the Hindú law-books by European authors; and it is stated, on the information of Sir Edward Ryan, to be constantly referred to in the Supreme Court at Calcutta as all but decisive of any point of Hindú law contained in it; and that more respect would be paid to it by the Judges there, than to the opinions of the Pandits.[2]

Steele's Summary of the Law of Cast[3], printed by order of

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[1] Principles and Precedents of Hindu Law, by W. H. Macnaghten. 2 Vols. 8vo. Calcutta, 1829

[2] *Rungama* v. *Atchama and others.* 4 Moore's Indian Appeals. p. 101.

[3] Summary of the Law and Custom of Hindoo Castes within the Dekhun Provinces subject to the Presidency of Bombay, chiefly affecting Civil Suits. By Arthur Steele. Fol. Bombay, 1827.

the Governor in Council of Bombay, is inconvenient of reference, on account of its want of arrangement; but it contains a mass of useful information, and may always be consulted with advantage. He divides his work into three parts, Law, Casts, and Existing Customs; the two latter divisions being especially useful, as containing a quantity of matter not to be met with elsewhere. The same remark applies to the two Appendices, one on the customs of particular Casts of Poona, the other on the customs of the Gosayins. Mr. Steele has prefaced his work by what is designated a List of Sanskrit Law-books; but it is encumbered with the titles of a number of works which are foreign to the subject, and the names of all are so disfigured by an uncouth rendering of the Mahratta pronunciation as to be scarcely intelligible.

A treatise on the Hindú Law of Inheritance, Gift, &c., has recently appeared at Calcutta, by Mr. Eberling[1]; but, so far as I have been able to ascertain, no copy of it has as yet reached this country.

Colebrooke's treatise on Obligations and Contracts[2] hardly comes within the class of works treating of Hindú law, inasmuch as it relates to the subject of contracts generally; he has, however, illustrated the law of contract throughout by reference to the Hindú system; and the student will find much that is valuable regarding that system under those titles which Colebrooke has completed. Unfortunately the work was never finished, and the Preface, together with the preliminary and introductory matter, promised by the author in the first and only published part, never saw the light.

The last mentioned treatise completes the list of works relating to the Hindú law by Europeans. It is to be regretted that they are so few in number; but when taken in conjunction with the translations from the original works, they are sufficient to enable the student to acquire a very considerable knowledge of the Hindú system of jurisprudence.

[1] See the Calcutta Review, No. XIII.

[2] A Treatise on Obligations and Contracts. By H. T. Colebrooke. Part I. (all published), 8vo. London, 1818.

(2) The Muhammadan Law.

(a) *On the Sources of the Law.*

The Muhammadan law, like that of the Hindús, is professedly founded upon revelation; and the Korán, though variously interpreted, is regarded, by the Musulmáns of every denomination, as the fountain-head and first authority of all law, religious, civil, and criminal.

Whenever the Korán was not found applicable to any particular case, which soon happened as the social relations and wants of the Arabs became more extended, recourse was had to the Sunnah (precept and example), or Hadís (sayings, tradition), that is, the oral law, which was, and is at the present day, held to be only second in authority to the Korán itself. Thus the Korán and the Sunnah stand in the same relation to each other, as the Mikrah and Mishnah of the Jews: and it may be remarked, that the words in both the Arabic and Hebrew languages are derived from similar roots, and have the same significations.

The Sunnah or Hadís[1], the second authority of Muhammadan law, comprises the actual precepts, actions, and sayings of the Prophet himself, not written down during his life time,

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[1] The word Sunnah is used generally, to signify all the traditions both of the sayings and doings of the Prophet, and the term Hadís is employed in the same comprehensive sense. M. De Slane says, "The distinction between the Hadíth (sayings), and the Sunan (doings), is not attended to by doctors of the Moslim law: both are equally authoritative." See كتاب وفيات الاعيان Ibn Khallikan's Biographical Dictionary, translated by the Baron M'Guckin de Slane, Vol. I. Introduction, p. xviii. note. 3 Vols. 4to. London, printed for the Oriental Translation Fund in 1842—45. M. De Slane's translation is a most valuable work to those who wish to gain a knowledge of the legal literature of the Muhammadans, as he has added to the text numerous learned notes, replete with curious and interesting information relating to the Muhammadan law and lawyers. It is to this translation that all the references to Ibn Khallikan, made in the notes to the following pages, must be understood to apply.

but preserved by tradition, and handed down by authorised persons. These precepts and traditions are divided into two classes, viz. the Kads (holy), which are supposed to have been directly communicated to Muhammad by the angel Gabriel; and the Nabawí (prophetic), or those which are from the Prophet's own mouth, and are not considered as inspired[1]; both these, however, have the force of law, and, with the Korán, constituted the whole body of the law at the time of Muhammad's death. "I leave with you," said the Prophet, "two things, which, so long as you adhere thereto, will preserve you from error: these are, the Book of God, and my practice."

In addition to the Korán and the Sunnah or Hadís, there are two other great sources of Muhammadan law, viz. the Ijmáa (concurrence), and the Kiyás (ratiocination).

The Ijmáa is composed of the decisions of the companions of Muhammad (Sahábah), the disciples of the companions (Tábiûún), and the pupils of the disciples: these decisions are said to have been unanimous, and are next in authority to the Korán and the Sunnah.

Both the Sunnah and the Ijmáa were originally preserved by tradition, and were transmitted through successive generations by learned men, who made the study of the Korán and the traditions, and their memorial preservation, an especial object. These learned men were called Háfiz (preserver)[2]; and in communicating their narratives to their disciples, they invariably mentioned, as a kind of preface, the series of persons through whom they had successively passed before they came into their possession: this preface is called the Isnád (sup-

[1] Other less important divisions and sub-divisions of the Sunnah have been made, classing them according to their respective value and authenticity, or the time in which they were first known or collected. See Harington's Analysis, Vol. I. p. 225, note. 2d edit. Journal Asiatique, 4re Série, Tome, xv. p. 185, note.

[2] The appellation of Háfiz is given to any one who knows the Korán by heart; but it is more particularly used by the Sunní writers to designate those who have committed to memory the six great collections of traditions, and who can cite the Isnáds with discrimination.

port), and according to the credibility attached to the narrators whose names are enumerated as the Isnáds, depends the authenticity and authority of the tradition related; some sects absolutely rejecting traditions which are received as authoritative by others. The Isnáds were retained in the books after the Sunnah and the Ijmáa had become reduced to writing, and collected together in the works which will presently be noticed.

The Kiyás, which is the fourth source of the Muhammadan law, consists of analogical deductions, derived from a comparison of the Korán, the Sunnah, and the Ijmáa, when these do not apply either collectively or individually to any particular case. This exercise of private judgment is allowed, with a greater or less extension of limit, by the different Muhammadan sects; some, however, refusing its authority altogether.

Since it appears, then, that although the sources of the law are the same throughout the Muhammadan world, there is a variety in the manner of their reception, and in the laws derived from them, it becomes necessary to describe shortly the principal sects, and to state the chief points of difference in their opinions as to the sources of the law.

(*b*) *On the Principal Muhammadan Sects, and their Legal Doctrines.*

The dissensions which arose on the death of the Prophet, with regard to the succession to the Khiláfat, were revived with renewed fury when, on the murder of Othmán, the noble and unfortunate Âlí succeeded to the dignity of Amír al-Múminín; and they eventually caused the division of Islám into two great parties or sects, called respectively the Sunnís, and the Shíâhs[1], who differ materially in the interpretation of the Korán, and in admitting or rejecting various portions of the oral law. The hatred entertained between these rival sects has been the cause of constant religious wars

[1] The word Shíâh, which signifies sectaries, or adherents in general, was used to designate the followers of Âlí as early as the 4th century of the Hijrah. Reland, De Relig. Mohamm. p. 37.

and persecutions scarcely to be surpassed in the history of any nation or creed, and still separates the followers of Muhammad into two classes, by a barrier more insurmountable than that which divides the Roman Catholic from the Protestant.

The Sunnís, who assume to themselves the appellation of orthodox, uphold the succession of the Khalífahs Abú Bakr, Omar, and Othmán, and deny the right of supremacy, either spiritual or temporal to the posterity of Âlí. They are divided into an infinity of sects; but of these it will be sufficient in this place to notice the four principal only, which agree one with another in matters of faith, but differ slightly in the form of prayer, and more especially with regard to the exercise of the Kiyás, and the legal interpretation of the Korán where the latter relates to property.[1]

These four principal sects, which are called after their founders, originated with certain eminent Mujtahid Imáms, named respectively Abú Hanífah, Málik Ben Anas, Muhammad Ash Sháfiî, and Ahmad Ben Hanbal. Two other Imáms were also the founders of Sunní sects: these were Abú Âbd Allah Sufyán as-Sauri[2], and Abú Dáwúd Sulaimán az-Záhirí[3],

[1] For a fuller account of the various Sunní sects, see Maracci, Prodromus, Pars III. p. 72, *et seq.*; Pococke, Specimen Historiæ Arabum, pp. 17, *et seq.*, and 212 *et seq.*; and Sale, Koran, Preliminary Discourse, sect. 8. The most celebrated work which treats of this subject is the Kitáb al-Milal wa an-Nihal, by Abú al-Fath Muhammad ash-Shahrastání, who died in A.H. 548 (A.D. 1153). The original text of Ash-Shahrastání has been edited by the Rev. Canon Cureton, and was printed for the Society for the Publication of Oriental Texts in 1842—1846. It is entitled, كتاب الملل و النحل, Book of Religious and Philosophical Sects. A translation of this work has also recently appeared by Dr. Haarbrücker, the title of which is, Abu-l-Fath Muhammad asch-Schahrastani's Religionspartheien und Philosophenschulen. 8vo. Halle, 1850.

[2] As-Saurí was born at Kúfah in A.H. 95 (A.D. 713), and died at Basrah, where he had concealed himself in order to avoid accepting the office of Kází, in A.H. 161 (A.D. 777).—Ibn Khall. Vol. II. p. 577; An-Nawawí, p. ٢٨٦

[3] Az-Záhirí was so called because he founded his system of jurisprudence on the *exterior*, or literal meaning of the Korán and the traditions, re-

but they had but few followers; and a seventh sect, which had for its chief the celebrated historian At-Tabarí[1], did not long survive the death of its author.

Abú Hanífah Nuamán Ben Sábit al-Kúfí, the founder of the first of the four chief sects of Sunnís, and the principal of the Mujtahid Imáms who looked to the Kiyás as a main authority upon which to base decisions, was born at Kúfah in A.H. 80 (A.D. 699), at which time four, or, as some authors say, six of the companions of the Prophet, were still living. Abú Hanífah died in prison at Baghdád in A.H. 150 (A.D. 767)[2], having been placed in confinement by the Khalífah Al-Mansúr, on account of his having refused to accept of the office of Kází, from a consciousness of his own inefficiency; a refinement of modesty of which the Arabian lawyers may well be proud, since it is doubtful whether the biography of the jurisconsults of all nations and ages would present another instance of the same self-denial and suffering from similar motives. Unluckily, however, for Abú Hanífah's character, his consistency does not seem to have equalled his conscientious self-depreciation; for we find that he was originally a strong partisan of the house of Âlí; and it is even hinted that the cause of his subsequent change of opinion was to be traced to interested motives. The doctrine of Abú Hanífah, at first, prevailed chiefly in Îrák; but afterwards became spread over Assyria, Africa, and Máwará an-Nahar. It is at present very generally received throughout Turkey and Tátary, and, together with that of his two disciples, Abú Yúsuf and Muhammad,

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jecting the Kiyás. He was born at Kúfah in A.H. 202 (A.D. 817), and died at Baghdád in A.H. 270 (A.D. 883). He was a great partisan of Ash-Sháfiî.—Ibn Khall. Vol. I. p. 501. And see تهذيب الاسماء The Biographical Dictionary of Illustrious Men, by Abu Zakariya Yahya el-Nawawi, edited by Dr. Wüstenfeld, p. ٣٣٦. 8vo. Göttingen, printed for the Society for the Publication of Oriental Texts, 1842—1847. All the references to An-Nawawí's work in the following pages apply to this edition.

[1] Abú Jaafar Muhammad Ben Jarír at-Tabarí was born at Ámul in Tabaristán in A.H. 224 (A.D. 838), and died at Baghdád in A.H. 310 (A.D. 922).—Ibn Khall. Vol. II. p. 597; An Nawawí, p. ١٠٠.

[2] An-Nawawí, p. ٦٩٨.

is the chief, and, with but rare exceptions, the only authority which governs the Sunní law in India.

Abú Âbd Allah Málik Ben Anas, the founder of the second Sunní sect, was born at Madínah in A.H. 95 (A.D. 713), and died at the same place in A.H. 179 (A.D. 795). From the circumstance of his birth and death occurring at that city, he is sometimes called the Imám Dár al-Hijrah. Málik, in his youth, had the advantage of the society of Sihl Ben Saad, almost the sole surviving companion of the Prophet; and it is supposed that from him he derived his extreme veneration for the traditions. He was also intimate with Abú Hanífah, but he never imbibed that doctor's excessive partiality for the Kiyás.[1] The tenets of Málik Ben Anas are principally respected in Barbary and the northern states of Africa: they are not known to prevail in any portion of India.

Abú Âbd Allah Muhammad Ben Idrís ash-Sháfiî was born at Âskalán in A.H. 150 (A.D. 767), and eventually became the founder of the third of the chief Sunní sects. Ash-Sháfiî had the distinguished honour of belonging to the same stock as the Prophet himself, being descended from Âbd al-Mutallib, the son of Âbd Manáf, the ancestor of Muhammad. For this reason he is known by the surname of Al-Kuraishí al-Mutallibí. In his youth he was a pupil of Málik Ben Anas: he died at Cairo in A.H. 204 (A.D. 819).[2] Ash-Sháfiî's doctrine has a limited range amongst the Musulmán inhabitants of the sea-coast of the peninsula of India[3]; but the chief seats of its authority are Egypt and Arabia. It is also said to be in some repute amongst the Malays and the Muhammadans of the Eastern Achipelago. His followers were at one time very numerous in Khurásán; but at present his opinions are rarely quoted, either in Persia or India.

[1] Ibn Khall. Vol. II. p. 545.

[2] Ibn Khall. Vol. II. p. 569; An-Nawawí, p. ٥٦.

[3] Colonel Vans Kennedy says, "His doctrine is also followed by the descendants of the Arabs, the Mapillas of Malabar, which renders a reference to his peculiar opinions frequently necessary at Bombay."—Journal of the Royal Asiatic Society, Vol. II. p. 81.

Abú Âbd Allah Ahmad ash-Shaibání al-Marwazí, generally known by the name of Ibn Hanbal, the founder of the fourth Sunní sect, was born at Baghdád in A.H. 164 (A.D. 780), and died in A.H. 241 (A.D. 855). This learned doctor, who was a pupil of Ash-Sháfiî, strenously upheld the opinion that the Korán was uncreated, and that it had existed from all eternity. Since, however, it happened unfortunately that the Khalífah Al-Mustásim maintained the contrary doctrine, Ibn Hanbal was greatly persecuted for his persistent opposition to that monarch's favourite belief. It is related in history that no fewer than 800,000 men and 60,000 women were present at this doctor's funeral; and that 20,000 Christians, Jews, and Magians became Muhammadans on the day of his death.[1] Whatever degree of credit may be attached to this extraordinary statement, its mere existence sufficiently attests the astonishing reputation which Ibn Hanbal had acquired during his lifetime, and the veneration in which he was held after his death. Persecution, however, soon thinned the ranks of his followers; and though at one time they were very numerous, the Hanbalís are now seldom to be met with out of the confines of Arabia.

Of these four chief sects of the Sunnís, the followers of Málik and Ibn Hanbal may be considered as the most rigid; whilst those of Ash-Sháfiî may be characterized as holding doctrines most conformable to the spirit of Islám, and the sectaries of Abú Hanífah, as maintaining the mildest and most philosophical tenets of all.[2]

The second great Muhammadan sect, the Shíâhs, uphold the supremacy of Âlí Ben Abí Tálib, the first convert to Islám, the cousin and son-in-law of Muhammad, and one of the ablest and bravest of all the Arabian chieftains. The Shíâhs assert that Âlí was the only lawful successor of the Prophet, and that both the Imámat and Khiláfat, that is, the supreme spiritual and temporal authority, devolved of right upon him and his posterity, notwithstanding that they were actually and un-

[1] Ibn Khall. Vol. I. p. 44; An-Nawawí, p. ١٤٢.
[2] Ibn Khall. Vol. I. Introduction, p. xxvi.

justly ousted by the Khalífahs of the Bení Umayyah and Bení Âbbás. The Shíâhs are divided into five principal sects[1], which differ in points of faith and religious doctrine; and these again are subdivided into many distinct classes: the Shíâh sects, however, with a few trifling exceptions, never held any variety of opinion in matters of law.[2]

The Shíâh doctrines were adopted by the Persians at the foundation of the Safaví dynasty in A.H. 905 (A.D. 1499), and, from that period until the present time, have prevailed as the national religion and law of Persia, notwithstanding the violent efforts to substitute the Sunní creed made by the Afghán usurper Ashraf, and the great Nádir Sháh. There

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[1] Von Hammer only allows four principal sects.—Geschichte der Assassinen, p. 25. I follow Ash-Shahrastaní.

[2] Some account of the tenets of the Shíâhs will be found in the following works:—كتاب الملل و النحل, p. ١٠٨, *et seq.*; Haarbrücker's Schahrastani, p. 164, *et seq.*; Pococke, Specimen Historiæ Arabum, pp. 23 and 257; Maracci, Prodromus, p. 80; Sale, Koran, Preliminary Discourse, sect. 8; Von Hammer, Geschichte dér Assassinen, p. 25 *et seq.*; Malcolm, History of Persia, Vol. II. p. 346, *et seq.* In order, however, to obtain an accurate knowledge on the subject, the native authorities must be consulted. Amongst these, the Hakk al-Yakín, by Muhammad Bákir Ben Muhammad Takí, who dedicated his work to Sháh Sultán Husain, is deservedly one of the most celebrated. It contains a body of the theology of the Shíâhs, and quotes and refutes the arguments opposed to the opinions advanced, illustrating the whole with evidences of the truth of the Shíâh doctrines, and with numerous traditions. There is also a very interesting little work by Abú al-Fatúh Rází Makkí, entitled the Risálat-i, or Kitáb-i Hasaníyah, which has a great reputation amongst the Shíâhs, particularly in Persia. It consists of an imaginary disputation between a Shíâh slave-girl and a learned Sunní jurisconsult, on the merits of their respective doctrines, in which, as a matter of course, the girl utterly discomfits her opponent. The argument is very ingenuously managed, and the treatise, taken altogether, furnishes a good and concise exposition of the tenets of the Shíâhs, and the texts on which their belief is founded. The Risálat-i Hasaníyah was translated from the Arabic into Persian, by Ibráhím Astarábádí, in A.H. 958 (A.D. 1551). Both of these works have been printed in Persia, with great accuracy and elegance. كتاب حسنيّه fol. Tehran, A.H. 1239 (A.D. 1823). كتاب حقّ اليقين fol. Tehran, A.H. 1241. (A.D. 1825).

are, also, numerous Shíâhs in India, though but few when compared to the Sunnís; and a small number are to be found in the eastern portion of Arabia. During the Muhammadan period of Indian history, the Shíâhs were chiefly confined to the kingdoms of Bíjápúr and Golconda,[1] their sect never having been suffered to make any progress in Hindústán[2], where the religion of the state was according to the tenets of the Sunnís. Since the British rule, however, those who profess the Shíâh faith are no longer persecuted, or forced to conceal their opinions: and although the majority of the Musulmáns in India still adhere to the doctrines of Abú Hanífah, the Shíâh is allowed to celebrate unmolested the tenth of Muharram, and to mourn the untimely fate of the virtuous Husain, and the martyrs of the plain of Karbalá.

These are the principal sects of the Muhammadans who differ in opinion with regard to legal doctrine. I have already stated that the Korán is universal in its authority; but this must be understood with the reservation that such authority depends upon its interpretation, and that the latter differs according to the views of the principal commentators of the various sects, the Shíâhs more especially rendering the meaning of many texts in a manner totally opposed to their acceptation by the sects of the Sunnís.

The traditions and the Ijmáa are, in like manner, looked upon by all Musulmáns as authoritative in the second degree; but, as I have mentioned above, their value varies, and depends upon their Isnáds. Many writers on the religion and laws of the Muhammadans have asserted that the Shíâhs reject entirely the authority of tradition. Nothing, however, can be more erroneous than this assertion, since all Shíâhs admit the legality of the Sunnah, when verified by any of the Twelve Imáms[3]; and all equally venerate the precepts and examples,

[1] Chardin, Tome IX. p. 27; Bernier, Tome I. p. 285.

[2] Elphinstone, History of India, Vol. II. p. 201. 2d edit.

[3] Alí, and his immediate posterity, are called the Twelve Imáms by the Shíâhs, and the title thus employed must not be confounded with its indis-

both of the Prophet and the Twelve Imáms themselves, and the traditions that have been handed down by the friends and partisans of Âlí[1], rejecting only such portions of the Sunnah as are derived from persons contaminated by crime or disobedience to God. In the latter class they range all the traditions recorded on the authority of the three first Khalífahs, and of such of the companions, the Tábiûún, and their disciples, as were not included amongst the supporters of Âlí Ben Abí Tálib. The error with regard to the Shíâh doctrine in matters of tradition seems to have arisen from the fact, that our knowledge of their tenets has been almost entirely taken from Sunní sources, in which the word Sunnah is used to signify exclusively the traditions of the Sunnís; and also that the Shíâhs themselves almost invariably employ that word when speaking of the Sunní traditions, calling their own Hadís, and even referring to the Sunnís as the Ahl-i Sunnah (people of the Sunnah), in contradistinction to themselves, whom they generally call the Ahl-i Bait (people of the house of the Prophet). When, therefore, it is asserted that the Shíâhs reject the authority of tradition, it must only be understood to mean that they pay no regard to the Sunnah recorded by the enemies of Âlí: they of course repudiate the doctrines of the founders of the principal Sunní sects, holding their names even in abhorrence.[2] What has been said with

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criminate use by the Sunní sects, who applied it to a large number of eminent doctors. The Shíâhs consider the title of Imám as a sacred appellation, and restrict it entirely to Âlí and his descendants; holding that the office of Imám is not a matter depending upon the choice of the people, but a fundamental article of religion. The names of the Twelve Imáms are, Âlí Ben Abí Tálib al-Murtaza, Hasan Ben Âlí al-Mujtaba, Husain Ben Âlí ash-Shahíd, Âlí Ben Husain Zain al-Âábidín as-Sajjád, Muhammad al-Bákir, Jaafar as-Sádik, Músa al-Kásim, Âlí ar-Rizá, Muhammad al-Jawád, Âlí al-Hádí, Hasan al-Askarí, and Muhammad Abú al-Kásim al-Mahdí. The last of these is supposed to be concealed, and not dead; and it is believed by the Shíâhs that he will re-appear at the last day; whilst, in the mean time, it is unlawful and impious to give the title of Imám to any other.

[1] These are enumerated in the third and fourth books of the Majális al-Muminín, a work to which I shall shortly recur.

[2] Malcolm, History of Persia, Vol. I. p. 358.

regard to the traditions as received by the Shíâhs, applies equally to the Ijmáa, the authority of which depends upon the source from whence it is derived.

The Kiyás, as I have mentioned in a former page, is variously received by the different sects. It seems pretty clear, from a tradition recorded in the Mishkát al-Masábih[1], that the exercise of private judgment was acknowledged and authorised by the Prophet himself. In the first, second, and third centuries of the Hijrah, the principal jurisconsults appear to have founded their practice upon that of their predecessors; but some, venturing to rely upon analogical deduction from the first three sources of the law, were called Mujtahids, because they employed the utmost efforts of their minds to attain the right solution of such questions of law as were submitted to their judgment.[2]

Amongst the Sunní sects, Mujtahids are classed under three principal divisions, according to the degree of Ijtihád which they may have attained. The word Ijtihád signifies, in its most common acceptation, the striving to accomplish a thing, the making a great effort; but in speaking of a law-doctor, it denotes the bringing into operation the whole capacity of forming a private judgment relative to a legal proposition.[3]

The chief degree of Ijtihád conferred on its possessor a total independence in legislative matters, and he became, as it were, a connecting link between the law and his own disciples, who had no right to question his exposition of the Korán, the Sunnah, and the Ijmáa, even when apparently at variance with

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[1] Mischát ul Masábih, translated by Capt. Matthews, Vol. II. p. 222.

[2] For the exact meaning of the word Mujtahid see Silvestre de Sacy's Chrestomathie Arabe, Tome I. p. 169, *et seq.*; the works there quoted; and Harington's Analysis, Vol. I. p. 233 (2d edit.) M. De Slane gives the best and most concise definition; viz. "The term Mujtahid is employed in Moslim divinity to denote a doctor who exerts all his capacity for the purpose of forming a right opinion upon a legal question."—Ibn Khall. Vol. I. p. 201, note.

[3] This definition is quoted from the Kitáb Taarífát, by Silvestre De Sacy, in his Chrestomathie Arabe, Tome I. p. 169.

those elements or sources of jurisprudence. The Mujtahids of this first class were very frequent in the three first centuries of the Hijrah; but in later times, the doctrines of the law becoming more fixed, the exercise of private judgment, to an unlimited extent, soon ceased to be recognized. Some later doctors, At-Tabarí and As-Suyútí for instance, claimed the right, but it was refused to them by public opinion.[1] The Mujtahids of the first class, who lived in the first century of the Hijrah, are esteemed as of higher authority than those who flourished in the second and third.

Those Mujtahids, who had arrived at the second degree of Ijtihád, possessed the authority of resolving questions not provided for by the authors of the chief sects, and were the immediate disciples of the acknowledged Mujtahids of the first class, who, in some instances, allowed their pupils to follow and teach opinions contrary to their own doctrines, and occasionally even adopted their views.

Those who had attained the third degree of Ijtihád were empowered to pronounce, of their own proper authority, sentences in all cases not provided for by the founders of the sects or their disciples. Their sentences were, however, to be derived from a comparison of the Korán, the Sunnah, and the Ijmáa, taken conjointly with the opinions of the Mujtahids of the first and second classes; and they were not authorised to controvert their published doctrines, either respecting the elements of the laws, or the principles derived therefrom. Mujtahids of the third class were required to possess a perfect knowledge of all the branches of jurisprudence, according to the doctrines of all the schools; and the class comprises a large number of doctors, of greater or less celebrity, some of whom were raised to the rank during their lifetime, but the greater portion subsequently to their decease.

As a title, the term Mujtahid has long since fallen into disuse amongst the Sunnís.[2]

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[1] Ibn Khall. Vol. I. p. 201, note; Journal Asiatique, 4me Série, Tome XV. p. 183.

[2] Ibn Khall. Vol. I. Introduction, p. xxvi, note.

Ibu Khaldún says, speaking of the exercise of the Kiyás, as allowed by the chief Sunní sects—"The science of jurisprudence forms two systems, that of the followers of private judgment and analogy (Ahl ar-Ráï wa al-Kiyás), who were natives of Îrák, and that of the followers of tradition, who were natives of Hijáz. As the people of Îrák possessed but few traditions, they had recourse to analogical deductions, and attained great proficiency therein, for which reason they were called 'the followers of private judgment': the Imám Abú Hanífah, who was their chief, and had acquired a perfect knowledge of this system, taught it to his disciples. The people of Hijáz had for Imám, Málik Ben Anas, and then Ash-Sháfiî. Some time after, a portion of learned men disapproved of analogical deductions, and rejected that mode of proceeding: these were the Záhirites (followers of Abú Dáwúd Sulaimán), and they laid it down as a principle, that all points of law should be taken from the Nusús (text of the Korán and traditions), and the Ijmáa (universal accord of the ancient Imáms)."[1]

The respective weight allowed to the Kiyás by Málik, Ash-Sháfiî, and Ibn Hanbal, is not easily to be ascertained, nor is it important in the present view of the question: their disciples were, however, termed "the followers of tradition" (Ahl as-Sunnat), in contradistinction to those of Abú Hanífah; and Abú al-Faraj says that these three doctors seldom resorted to analogical argument, whether manifest or recondite, when they could apply either a positive rule or a tradition. He adds that Abú Dáwúd Sulaimán rejected the exercise of reason altogether.[2]

Of all the Sunní sectarians, those who adhere to the doctrines taught by Abu Hanífah, as being the most numerous in India, claim our almost undivided attention. That jurisconsult himself, according to Abú al-Faraj, was so much inclined to the exercise of reason, that he frequently preferred

[1] Quoted in the Introduction to M. De Slane's Ibn Khallikan, Vol. I. p. xxvi, note.

[2] Quoted in Pococke, Specimen Historiæ Arabum, p. 26.

it, in manifest cases, to traditions of single authority[1]; and his disciples in India have constantly upheld the exercise of the Kiyás in an extended form, as is sufficiently notorious, and amply proved by certain passages relating to the guidance of Magistrates quoted in the Fatáwa al-Âálamgírí. The first passage alluded to is from the Muhít of Rází ad-Dín Níshápúrí, and is as follows:—"If the concurrent opinion of the companions be not found in any case which their contemporaries may have agreed upon, the Kází must be guided by the latter. Should there be a difference of opinion between the contemporaries, let the Kází compare their arguments, and adopt the judgment he deems preferable. If, however, none of the authorities referred to be forthcoming, and the Kází be a person capable of disquisition (Ijtihád), he may consider in his own mind what is consonant to the principles of right and justice, and, applying the result with a pure intention to the facts and circumstances of the case, let him pass judgment accordingly." The second is taken from the Badáïa of Abú Bakr Ben Masûúd al-Káshání, who died in A. H. 587 (A.D. 1191)[2]:—"When there is neither written law, nor concurrence of opinions, for the guidance of the Kází, if he be capable of legal disquisition, and have formed a decisive judgment on the case, he should carry such judgment into effect by his sentence, although other scientific lawyers may differ in opinion from him; for that which, upon deliberate investigation, appears to be right and just, is accepted as such in the sight of God." And again, a third passage is quoted from the last-mentioned work:—"If in any case the Kází be perplexed by opposite proofs, let him reflect upon the case, and determine as he shall judge right; or, for greater certainty, let him consult other able lawyers; and if they differ, after weighing the arguments, let him decide as appears just. Let him not fear or hesitate to act upon the result of his judgment, after a full and deliberate examination." Passages from other law-books to the same effect are also quoted in the Fatáwa al-Âálamgírí, and the compilers

[1] Pococke, Specimen Historiæ Arabum, p. 26.
[2] Háj. Khalf. Tom. II. p. 235.

of the latter work concur entirely in the opinions which they cite. In all such cases, however, it is pre-supposed that the Magistrate so exercising his private judgment, should possess the qualifications of a Mujtahid of the third class. I have not been able to ascertain whether or not the Shíâhs classed their Mujtahids according to the degree they had attained in Ijtihád, as with the Sunnís; but in former times the title seems to have implied in its possessor infallibility, both in doctrine and in conduct.[1] In Persia the title of Mujtahid exists at the present day, and is assumed by the chief priests and jurisconsults, who are elected to the dignity by the suffrage of the inhabitants of the provinces in which they live, and as such they exercise a great controul over the Law Courts, and are even superior in authority to the Judges themselves.[2]

(c) *On the Muhammadan Law-books.*

It was not until a considerable time after the foundation of Islám that the traditions and interpretations of the law were reduced to writing. "The articles of law," says Ibn Khaldún[3], "or, in other terms, the commandments and prohibitions of God, were then borne (not in books), but in the hearts of men, who knew that these maxims drew their origin from the Book of God, and from the practice (Sunnah) of the Prophet himself. The people at that time consisted of Arabs, wholly ignorant of the mode by which learning is taught, of the art of composing works, and of the means by which knowledge is enregistered; for to these points they had not hitherto directed their attention. Under the companions of Muhammad, and their immediate successors, things continued in the same state; and, during that period, the designation of Kurrá (readers) was applied to those who, being not totally devoid of learning, knew by heart and communicated information. Such were the persons who could repeat the Korán,

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[1] De Sacy, Chrestomathie Arabe, Tome I. p. 171.

[2] Malcolm's History of Persia. Vol. II. p. 442, *et seq.* Ibn Khall. Vol. I. Introduction, p. xxvi. note.

[3] Quoted by De Slane in his Introduction to Ibn Khallikan. Vol. II. p. v.

relate the sayings of the Prophet, and cite the example of his conduct in different circumstances. (This was a necessary duty), inasmuch as the articles of the law could only be known from the Korán, and from the traditions which serve to explain it." Learned doctors even presided over schools of law, delivered lectures, and actually composed works which were not committed to writing.

Under these circumstances, the traditions very soon increased to such an extent, that it became not only advisable, but necessary, to make collections of them, and to separate those which were authentic from those of doubtful authority.

The first attempt of this kind appears to have been made by Ibn Shiháb az-Zuhrí, during the Khiláfat of Omar Ibn Âbd al-Âzíz.[1] About the same time, or soon after, more particularly between the years 140 and 150 of the Hijrah, other learned men compiled and arranged collections of the traditions, and composed divers commentaries and treatises on jurisprudence, and the interpretation of the Korán in regard to legal matters.

In process of time, works on these subjects became accumulated to an almost incredible extent; so that the bare enumeration of their titles would fill an ordinary volume; and a reference to the biographical works of Ibn Khallikan[2] and An-Nawawí, or the Bibliographical Dictionary of Hájí Khalfah[3], will shew the name of a traditionist or writer on jurisprudence, or the title of a legal work, on almost every page.

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[1] De Slane in Ibn Khall. Vol. I. Introd. p. xviii.

[2] M. De Slane, whose translation of Ibn Khallikan I have already mentioned, is now employed in editing the text of Ibn Khallikan: the first Volume has already appeared, and is entitled, الجزء الاوّل من كتاب وفيات الاعيان وانباء ابناء الزّمان ماثبت بالنّقل او السّماع او اثّبته العيان لابن خلّكان Kitab Wafayat al-Aiyan. Vies des hommes illustres de l'Islamisme en Arabe, par Ibn Khallikan, publicés par le Baron M'Guckin De Slane. Tome I. 4to. Paris 1842.

[3] The text of the Kashf az-Zunún of Hájí Khalfah is in the course of being edited, together with a Latin translation by Professor Fluegel. Five 4to. volumes have been published. Printed for the Oriental Translation Fund in 1835—50. It is to this edition that I have made reference in the notes.

The biographical and bibliographical dictionaries, which are very numerous, are of the greatest service in guiding the researches of the student into the legal literature of the Musulmáns. In addition to the general dictionaries of authors, and their works, there are many biographical collections especially devoted to the lives of celebrated doctors of law[1], under the title of Tabakát al-Fukahá, and there are a variety of similar compositions which are otherwise designated. The most celebrated of the Tabakát al-Fukahá was composed by Abú Ishak ash-Shírází[2], who died in A.H. 476 (A.D. 1083). A modern history of jurisprudence, or rather of jurists, has been compiled in Hindí, from the works of Ibn Khallikán and As-Suyútí, by Maulaví Subhán Bakhsh, and was published at Dehlí in the year 1848.[3]

Special biographical treatises have also been written, recording the histories of learned doctors of each particular sect. Among the Sunnís, the most remarkable works which give an account of the Hanafí lawyers are the Jawáhir al-Muzíyat fí Tabakát al-Hanafíyat[4], by the Shaikh Muhí ad-Dín Âbd al-Kádir Ben Abí al-Wafá al-Misrí, who died in A.H. 775 (A.D. 1373), and the Tabakát as-Saníyat fí Tarájim al-Hanafíyat[5], by Takí ad-Dín Tamímí, who died in A.H. 1005 (A.D. 1596); in both of which works the lives are arranged in alphabetical order. The chief biographer of the Máliki lawyers was Burhán ad-Dín Ibrahím Ben Âlí Ben Farhún, who died in A.H. 799 (A.D. 1396): his work is entitled the Díbáj al-Muzahhib.[6] There are numerous biographical collections

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[1] Háj. Khalf. Tom. IV. pp. 139, *et seq.*, and 149.

[2] Ibn Khall. Vol. I. p. 9. Háj. Khalf. Tom. IV. p. 149. An-Nawawí p. ٦٤٦.

[3] ترجمه تاريخ الحكماء اور تذكره المفسّرين مولفه علامه عبد الرّحمن جلال الدّين سيوطي اور تذكره الفقها خلاصه وفيات الاعيان ابن خلّكان كا مولوي سبحان بخش Biographical History of Mohummadan Jurisprudence, the Theology and Philosophy compiled from Ibn Khallikan Kifty, and Soyuty's Mofassiryn by Moulvee Subhan Bukhsh. Fol. Dehli, 1848. (Lithographed).

[4] Háj. Khalf. Tom. II. p. 648.

[5] Háj. Khalf. Tom. IV. p. 139.

[6] Háj. Khalf. Tom. IV. p. 240.

treating of the lives of the principal followers of Ash-Sháfiî, several of which are entitled Tabakát ash-Sháfiîyat: the most noted is by Táj ad-Din Âbd al-Wahháb Ben as-Subkí, who died in A. H. 771 (A. D. 1369).[1] The Tabakát al-Hanbalíyat comprises the lives of the most famous doctors of the sect of Ibn Hanbal: it was commenced by the Kází Abú al-Husaín Ben Abú Yaali al-Farrá, continued by the Shaikh Zain ad-Dín Âbd ar-Rahman Ben Ahmad, commonly called Ibn Rajab, and concluded by Yúsuf Ben Hasan al-Mukaddasí: these three writers died respectively in A. H. 526, 795, and 871 (A. D. 1131, 1392, and 1466).[2]

The great biographical work of Núr Allah Ben Sharíf al-Husainí ash-Shústarí, entitled the Majális al-Múminín, is a mine of valuable information respecting the most notable persons who professed the Shíâh faith. The author has given an entire book or section (the fifth Majlis) to the lives of the traditionists and lawyers, and he has specified the principal works composed by each learned doctor at the end of their respective histories. Núr Allah does not mention the period when he wrote the Majális al-Múminín, nor have I been able to ascertain when he died. The fact, however, of his not giving the life of the celebrated lawyer Bahá ad-Din al-Âámilí, who died in A.H. 1031 (A.D. 1621), whilst the latest lawyer named in his collection is stated to have died in A.H. 996 (A.D. 1587), fixes the composition of the work in the early part of the eleventh century of the Hijrah. It is from this work that I have principally derived the account of the Shíâh law-books and their authors which will be found in the following pages.

In addition to the Majális al-Múminín of Núr Allah, there are several other biographies of eminent Shíâhs. The most celebrated works of this nature, and which are constantly quoted by Núr Allah, are the writings of Muhammad Ben Âmrú at-Tamímí; the great biographical work of Abú al-Hunain Ahmad Ben Âlí an-Najáshí[3] on the lives of the tradi-

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[1] Háj. Khalf. Tom. IV. p. 139. [2] Háj. Khalf. Tom. IV. p. 135.

[3] I have had access to no less than five MSS. of the Majális al-Múminín, viz. three in the British Museum, numbered respectively, Addit. MSS.

tionists, which is generally quoted by the name of the Kitáb-i Rijál; and the Khulásat al-Akwál, by the famous Shaikh al-Âllámah Jamál ad-Dín Hasan Ben Yúsuf al-Mutahhir Hillí, commonly known as Shaikh Âllámah Hillí. An-Najáshí died in A.H. 405 (A.D. 1014), and the Shaikh Âllámah in A.H. 726 (A.D. 1325). An author of equal reputation, the Shaikh Abú Jaafar Muhammad Ben al-Hasan at-Tusí, who was one of the chief Mujtahids of the Imámíyah sect, and died in A.H 460, (A.D. 1067), also wrote a work, which is frequently referred to in the Majális al-Múminín: it is a bibliographical dictionary of Shíâh works, together with the names of the authors, and is entitled Fihrist-i Kutb ash-Shíâh wa Asmá al-Musannifín.[1] Abú Yahya Ahmad Ben Dáwúd al-Farází al-Jurjání, who was originally a Sunní, but became a convert to the Imámíyah faith, was also the author of a biographical work called Kitáb fí Maarifat ar-Rijal.[2]

It will be readily conceived, from the details above given, that any attempt to give even a tolerably complete list of the Muhammadan law-books would far exceed the limits of this Introduction. I have endeavoured, however, in the following pages, to make such a selection from the mass as may prove useful to the student, and to enumerate and describe all such as have been printed, as well as some of the works still in MS. which are of chief authority amongst the different sects, and more especially those which are in the greatest repute, and most frequently referred to in India. I may add, that I have examined the originals of the works described, whenever they were procurable; and that, where the works themselves were not to

6606, 16715, 16716; one in the library of the East-India House, No. 1400; and a fifth kindly placed at my disposal, amongst other valuable MSS. on Muhammadan law, by my friend Nathaniel Bland, Esq.; but in all a difficulty occurs as to the correct reading of this proper name, owing to the dubious position of the diacritical points. I have adopted the orthography which seems to be favoured by the majority of the MSS.

[1] The greater part of Abú Jaafar Túsí's works were publicly burnt in Baghdád in the tumult that arose between the Sunnís and Shíâhs in A.H. 448 (A.D. 1056).—Majális al-Múminín.

[2] Majális al-Múminín.

be met with, I have invariably derived my information from the native authorities, with the exception, however, of a few instances, when other sources will be found indicated in the notes.[1]

Al Ûlúm ash-Sharîíyat, one of the great classes into which the Muhammadan encyclopædists divide the whole circle of the sciences,[2] comprehends all those which have relation to religion and law, which are divided into seven sections :—1. Îlm al-Karát, the Science of Reading the Korán ; 2. Îlm at-Tafsír, the Science of the Interpretation of the Korán ; 3. Îlm al-Hadís, the Science of the Traditions; 4. Îlm ad-Diráyat al-Hadís, the Science of Critical Discrimination in matters of Tradition; 5. Îlm Usúl ad-Din, or Îlm al-Kalám, the Science of Scholastic Theology; 6. Îlm Usúl al-Fikh, the Science of the Elements or Principles of Jurisprudence. 7. Îlm al-Fikh, the Science of Practical Jurisprudence. These sections are again subdivided into a multitude of inferior classes.[3]

It will not be necessary, in this Introduction, to enter more fully into the distinction, distribution, and definition of the Îlms, or sciences, connected with religion and law, under which the Muhammadan legal writings might be ranged in the order of their subjects, as I have adopted an arbitrary classification, comprising five great divisions under which the law-books of the Musulmáns, so far as they apply in India, seem naturally to fall.

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[1] I take this opportunity of returning my sincerest thanks to Professor Horace Wilson, for his liberality in granting me unreserved access to the library of the Honourable East-India Company; to Dr. Kidd, Regius Professor of Medicine in the University of Oxford, for allowing me to consult the MSS. preserved in the Radcliffe Library; and to Nathaniel Bland, Esq., and the Rev. George Hunt, for the loan of several valuable and interesting MS. works on Muhammadan law from their private collections.

[2] These classes will be found detailed by Hájí Khalfah in the Introduction to the Kashf az-Zunún, Tom. I. p. 24, *et seq.* The whole system of the Muhammadan encyclopædists is also admirably displayed by the learned Von Hammer, in his Encyklopädische Uebersicht der Wissenschaften des Orients. 8vo. Leipzig, 1804.

[3] Von Hammer, op. cit. p. 568, *et seq.* Mirza Kazem Beg has given a somewhat different arrangement of the divisions of the Ûlúm ash-Sharíiyat. See Journal Asiatique, 4me Série, Tome xv. p. 159.

These are—

I. The Korán itself, and the Tafsírs or Commentaries which serve to interpret and illustrate the difficult passages, and to expound the meaning of the sacred text.

II. The works which treat of Traditions, and the Commentaries thereon.

III. The general treatises on the fundamental principles of law, spiritual and temporal, and practical jurisprudence, together with the Digests of general or special law, and their Commentaries.

IV. The separate Treatises on the law of inheritance, or Îlm al-Faráïz, a branch of the Îlm al-Fikh, which exist in considerable numbers, although the subject is almost always included in the general treatises.

V. The books of decisions, comprehended by the Musulmán lawyers under the Îlm al-Fatáwa, or Science of Decisions, which is also a branch of the Îlm al-Fikh: these consist simply of the recital of the decisions of eminent lawyers in particular cases, and form a body of precedent, having various authority, and serving for the guidance of lawyers in subsequent decisions, much in the same manner as our Reports of decided cases in England.

A sixth class may be now added to the books on Muhammadan law having authority in India. I allude to the original works on the subject by European authors, which will be severally noticed after the native treatises.

It is advisable to treat separately of those works which are of authority respectively amongst the Sunnís and Shíâhs, inasmuch as they are never interchangeable; with the exceptions, however, already noticed, that the Koran itself is of paramount authority with both sects, and that the Shíâhs receive such traditions of the Sunnís as are proved by their Isnáds to have been transmitted through, or verified by, the descendants, friends, or partisans of Âlí Ben Abí Tálib.

It is not an easy matter to obtain information respecting the Shíâh authorities of law, since that sect contributed but little to the literature of Arabia, more especially in the earlier ages of Islám, when law was regarded as the chief and most worthy of the sciences. But though the Shíâh writers on tradition

and law are few in number when compared to those of the Sunní sects, yet some of the very greatest names in Oriental literature appear in the list; and the illustrious Jámí the poet, Al Masûúdí thehistorian, and Husain Wáîz Káshifí the moralist, are numbered in the ranks of Shíâh lawyers and divines.

I. The Korán is believed by all orthodox Musulmáns to be uncreated and eternal, subsisting in the very essence of God[1], and revealed to Muhammad by the angel Gabriel, at different times during a space of twenty-three years. Wherever its texts are applicable, and not subsequently abrogated by others, they are held to be unquestionable and decisive, as the word of God transmitted to man by the last, or, as he is emphatically called, the Seal of the Prophets, Muhammad the messenger of God.

The Korán, as we now possess it, originated after the Prophet's death, when the revelations left by him, existing either in manuscript or preserved in the memory of his companions, were digested and put in order by his successor Abú Bakr. This Digest, when transcribed and arranged, was put into the hands of Omar's daughter, Hafsah, who was one of the Prophet's widows.

In the 30th year of the Hijrah the Khalífah Othmán, finding great discrepancies in the copies of the Korán, which were spread abroad in the different provinces, caused a number of transcripts to be made, under the inspection of four supervisors, from the copy in the possession of Hafsah; and these transcripts were dispersed throughout the empire, whilst all those previously extant were suppressed and destroyed.

Thus arose the present text of the Korán, which is considered as authentic, though some few various readings still occur,

[1] This is the orthodox belief, but the Muatazalís, and some others, denied the eternity of the Korán. (Poc. Spec. p. 220.) Al Ghazálí reconciles both opinions, saying that "the Korán is read and pronounced with the tongue, written in books, and kept in memory; and is yet eternal, subsisting in God's essence, and not possible to be separated thence by any transmission into men's memories or the leaves of books." Sale's Prel. Disc. Sect. iii. And see Poc. Spec. p. 222, *et seq.*, and Ibn Khall. Vol. III. p. 359, n. 8.

proceeding, for the most part, from the omission of the vowel points, which were not supplied in the earlier copies. The text of the Korán has been so often printed, that to specify the editions would be supererogatory.

The first interpreters of the text of the Korán were the Companions of the Prophet; and it may be imagined that the subtle-minded Musulmáns soon flocked in numbers to undertake the sacred and delicate task of interpreting and explaining the holy text, upon which their entire rule of conduct in this world, and hope of salvation in the next, were believed to depend. The commentaries on the Korán are accordingly almost countless, and are divided into classes according to their mode of treating the subject, but which it will not be necessary here to dwell upon. One or two Commentaries having the greatest authority may be noticed.

The historian Abú Jaafar Muhammad Ben Jarír at-Tabarí, who died in A.H. 310 (A.D. 922), wrote a Commentary, which has great reputation, and is mentioned in terms of high praise, both by As-Suyútí and An-Nawawí.[1] The most famous of all the Commentaries amongst the Sunnís are, however, the Kashsháf[2] and the Anwár at-Tanzíl.[3] The former is by Abú al-Kásim Jár Allah Mahmúd Ben Ûmr az-Zamakhsharí, who died in A.H. 538 (A.D. 1143)[4]; and the latter by Násir ad-Dín Âbd Allah Ben Ûmr al-Baizáwí, who died at Tabríz in A.H. 685 (A.D. 1286)[5]: he is said to have made great use of the work of Az-Zamakhsharí. Both these works are of almost universal authority amongst the Sunnís.

Extracts from them were published in the original Arabic, with a French translation by De Sacy, in the year 1829.[6] Dr.

[1] Háj. Khalf. Tom. II., p. 346. An-Nawawi, p. ١٠١.

[2] Háj. Khalf. Tom. V., p. 179. Hájí Khalfah gives a long account of this celebrated Tafsír.

[3] The Anwár at-Tanzíl is sometimes designated the Tafsír al-Kází.

[4] De Sacy, Anthologie Grammaticale Arabe, p. 269. Ibn Khall. Vol. III. p. 329.

[5] De Sacy, Anthol. Gram. Arabe, p. 37. Háj. Khalf. Tom. I., p. 469.

[6] De Sacy, Anthol. Gram. Arabe. p. 1, *et seq.* p. 281, *et seq.*

Fleischer is at present engaged in printing the text of Al-Baizáwí's work.[1]

The Tafsír al-Ghazálí, as it is generally called, but which is entitled the Yákút at-Táwíl by its author, Abú Hámid Muhammad al-Ghazálí, who died in A.H. 504 (A.D. 1110)[2], and the Durr al Mansúr of Jalál ad-Dín Âbd ar-Rahman Ben Abí Bakr as-Suyútí, who died in A.H. 911 (A.D. 1505), are also commentaries on the Korán of established reputation among the Sunnís. The latter work is founded upon the traditions.[3]

The Tafsír al-Jalálain, which is a concise but good commentary on the Korán, is the joint work of Jalál ád-Dín Muhammad Ben Ahmad al-Mahallí, who died in A.H. 864 (A.D. 1459), and the celebrated Jalál ad-Dín Âbd ar-Rahman Ben Abí Bakr as-Suyútí.[4] It has been recently printed at Calcutta.[5]

A Persian commentary on the Korán, entitled Tafsír Fath al-Âzíz, was printed at Calcutta, in the year 1843. It is by Sháh Âbd al-Âzíz Dahlawí.[6]

The Tafsírát Ahmadíyah is a commentary on the Korán of some extent, composed in the reign of the Emperor Aurangzéb Âálamgír, by Mulla Jain Júnfúrí. It was published at Calcutta, in the year 1847.[7]

A commentary on the Korán, by Ismaîíl Hakkí, entitled Rúh al-Bayán, was published at Búlák in the year 1840.[8] I have not seen this work.

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[1] Beidhawii Commentarius in Coranum, edidit, indicibusque illustravit H. O. Fleischer. Leipzig. 4to. Fasc. I—VII. 1844—48.

[2] De Sacy, Chrest. Arabe, Tome II. p. 505.

[3] Háj. Khalf. Tom. III. p. 192.

[4] Háj. Khalf. Tom. II. p. 358.

[5] تفسير الجلالين 4to. Calcutta, A.H. 1256 (A.D. 1840).

[6] تفسير فتح العزيز تصنيف شاه عبد العزيز دهلوي 4to. Calcutta, A.H. 1259 (A.D. 1843).

[7] تفسيرات الاحمدية في بيان الآيات الشرعية مع تفريعات المسائل الفقهية قد جمعها ملا احمد الشهير ملا جين جونفوري 4to. Calcutta, A.H. 1263 (A.D. 1847.)

[8] روح البيان Búlák, A.H. 1256 (A.D. 1840.)

One of the earliest of the many writers of commentaries on the Korán among the Shíâhs is Abú Jaafar Muhammad Ben Âlí Ben Bábawíyah, surnamed As-Sadúk, who lived in the fourth century of the Hijrah, and was a contemporary of Rukn ad-Daulah Dílamí. He was one of the greatest of the collectors of Shíâh traditions, and the most celebrated of all the Imámíyah lawyers of Kum. This writer composed a large and a small Tafsír. There is considerable uncertainty as to the exact time when he lived; Shaikh Túsí says, in the Fihrist, that Abú Jaafar died at Ray, in A.H. 331 (A.D. 942), but this appears to be erroneous. Shaikh Najáshí, who died in A.H. 405 (A.D. 1014), states that Abú Jaafar visited Baghdád, whilst yet in the prime of life, in A.H. 355 (A.D. 965), which might well have been the case, since Abú al-Hasan Âlí Ben Bábawíyah, the father of Abú Jaafar, did not die until A.H. 329 (A.D. 940). In addition to this, and which confirms the opinion that Shaikh Túsí is in error, Núr Allah relates, on the authority of the Shaikh ad-Dúryastí (or Dúrbastí) ar-Rází[1], that Abú Jaafar lived in the time of Rukn ad-Daulah Dílamí, and had repeated interviews with that prince, who, as is well known, reigned from A.H. 338 to A.H. 366 (A.D. 949—976).

A very extensive comment on the Korán, in twenty volumes, also proceeded from the pen of Abú Jaafar at-Túsí, already spoken of as the writer of a dictionary of Shíâh books and authors. This comment is generally called the Tafsír at-Túsí, but it was entitled by its author the Mujmia al-Bayán li Ûlúm al-Korán.[2]

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[1] There are three several eminent Shíâh doctors who are so called; viz. the Khájah Jaafar Ben Muhammad, and his two sons, Âbd Allah Ben Jaafar and Hasan Ben Jaafar, the second of whom is stated to have visited Baghdád in A.H. 566 (A.D. 1170), and to have returned to his native place, where he died about A.H. 600 (A.D. 1203). There is some doubt as to the reading of the word Dúrbastí, or Dúryastí. In the geographical portion of the Majális al-Múminín, I find that Dúrbast or Dúryast is described as a village near Ray, which is now called Darasht. This statement is made on the authority of the Muajam al-Buldán.

[2] Háj. Khalf. Tem. II. p. 369.

Abú al-Fatúh Rází, the author of the Kitáb-i Hasaníyah, already mentioned, devoted the same number of volumes to a similar work, and likewise composed a Persian Tafsír in four volumes.

The great poet Núr ad-Din Âbd ar-Rahman Jámí, who died in A.H. 898 (A.D. 1492)[1], is also the author of a Tafsír of some note. But the most celebrated of all the Shíâh commentaries on the Korán is that by the famous moral writer Kamál ad-Dín Husain al-Wáîz al-Káshifí as-Sabzawárí, the well-known author of the Anwár-i Suhailí and the Akhlák-i Muhsinín, who died about A.H. 910 (A.D. 1504), and who entitled his work the Mawáhib al-Âlíyat[2]: it is, however, generally known as the Tafsír-i Husainí. The Tafsír-i Husainí is now in course of publication, in lithography, at Calcutta. It is accompanied by the Arabic text of the Korán, with an interlinear Hindí translation, and another Persian comment entitled the Tafsír-i Âbbásí: two volumes of this edition have already appeared.[3]

II. The first collections of traditions said to have been written down, are those of Abú Bakr Ben Shiháb az-Zuhrí; Âbd al-Málik Ben Juraij; Málik Ben Anas, the founder of the second sect of Sunnís, in his work called the Muwatta; and Ar-Rabía Ben Subaih. It has not been ascertained which author is entitled to priority. Az-Zuhrí is considered to have been the first by As-Suyútí[4] and Al-Makrízí[5]; whilst others give the preference to the Muwatta[6], or to the compilations of Ibn Juraij or of Ar-Rabía. The preponderance seems, however, to be in favour of Âbd al-Málik Ben Juraij.

Two others of the founders of the chief Sunní sects are mentioned as the authors of some of the earliest works on the traditions: Ash-Shafiî being reputed to have composed two

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[1] Háj. Khalf. Tom. II. p. 357. [2] Háj. Khalf. Tom. II. p. 360.

[3] The Korán of Mohammad in the original Arabic, with two Persian comments, and an interlinear Hindee translation of the text, by Shah Abdool Kadir. 4to. Calcutta, 1837.

[4] Ibn Khall. Vol. I. Introduction, p. xviii.

[5] Quoted by M. Vincent in his Études sur la loi musulmane, p. 19.

[6] De Sacy, Chrest. Arabe. Tome I. p. 401.

collections, namely, the Masnad and the Sunan, and Ibn Hanbal to have compiled a work called the Masnad, containing a larger number of traditions than had been previously brought together.[1]

Whichever of the collections above mentioned may be entitled to precedence, the chief authorities in matters of tradition among the Sunnís are now the books which are known by the name of the Six Sahíhs, or Six Books of the Sunnah; whilst the Shíâhs have their own four books of Hadís, which, though less generally known, are by them equally venerated, and esteemed above all others on the same subject.

The Six Sahíhs, or genuine collections of traditions, are the chief authorities, after the Korán[2], among the Sunnís; and as they serve to illustrate points of doctrine not clearly explained in that sacred work, they are by them considered as its indispensable supplement.

The first of these, which is the most celebrated, and held in the most general estimation by all the Sunní sects, is the Jámia as-Sahíh, or, as it is sometimes called, the Sahíh al-Bukhárí[3], from the surname of its author, Abú Âbd Allah Muhammad Ibn Ismaîíl al-Bukhárí. It is generally considered to surpass the Sahíh of Muslim, the next in authority, although the two are reckoned to be only second in truthfulness to the Korán itself. Al-Bukhárí, "the chief Imám in the science of traditions," was born at Bukhárá, from which city he took his surname, in A.H. 194 (A.D. 809), and died at the village of Khartank, in the district of Samarkand, in A.H. 256 (A.D. 869). He was a pupil of the Mujtahid Imám Ibn Hanbal. His compilation is stated to comprise upwards of seven thousand traditions, which he himself affirmed he had selected from a mass of six hundred thousand, after a labour of sixteen years.[4]

[1] Ibn Khall. Vol. I. p. 44.

[2] De Sacy, Chrest. Arabe. Tome I. p. 407.

[3] Mishcát ul Masábih. Vol. I. p. 3. De Sacy, Chrest. Arabe. Tome I. p. 408.

[4] Háj. Khalf. Tom. II. p. 512 *et seq.* Hájí Khalfah gives a full account of this great work. And see Ibn Khall. Vol. II. p. 594; and An-

The Jámia as-Sahíh, called by its author the Masnad as-Sahíh, but most generally known as the Sahíh Muslim, by Abú al-Husain Muslim Ben al-Hajáj Ben Muslim al-Kushairí, surnamed An-Níshápúrí, who was a pupil of Ibn Hanbal, is considered as almost of equal authority with the Sahíh al-Bukhárí, and indeed by some, especially by the African doctors, is preferred to that work.[1] The two collections are constantly quoted together under the name of the Sahíhain, or two Sahíhs. Muslim is said to have composed his work from three hundred thousand traditions. He died at Níshápúr in A.H. 261 (A.D. 874), aged 55 years.[2]

The third collection of traditions in point of authority is the Jámia wa al-Ilal, by Abú Îísa Muhammad Ben Îísa at-Tirmizí: this work is more generally known by the name of the Jámia at-Tirmizí, and is also called the Sunan at-Tirmizí. At-Tirmizí was a pupil of Al-Bukhárí: he died in A. H. 279 (A. D. 892).[3]

Abú Dáwúd Sulaimán Ben al-Ashâs, surnamed As-Sajistání, wrote a Kitáb as-Sunan which contains four thousand eight hundred traditions selected from a collection made by him of five hundred thousand. It is considered as the fourth book of the Sunnah. Abú Dáwúd was born in A.H.

Nawawí, p. ٨٦. A most interesting notice of the Sahíh al-Bukhárí, by Dr. Ludolf Krehl, has lately appeared in the Zeitschrift der Deutschen Morgenländischen Gesellschaft. Band. IV. p. 1 *et seq.*

[1] Háj. Khalf. Tom. II. p. 513. De Sacy says, quoting Ibn Khaldún, "Les docteurs Africains se sont surtout attachés en fait de *hadiths*, ou traditions au recueil ou Sahih de Moslem, et d'un commun accord ils lui ont donné la préférence sur celui de Bokhari." (Chrest. Arabe, Tome II. p. 302.) Dr. Worms, however, states the contrary, and maintains the precedence of the Sahíh al-Bukhárí, saying of that collection, that, "elle marche en première ligne après le Koran; c'est sur le livre de Boukhari qu'en Afrique les juges musulmans font porter la main aux personnes dont ils exigent le serment"—(Journal Asiatique, 3me Série, Tome XIV. p. 239). This latter remark seems, however, to be restricted to the practice which obtains in Algeria, and perhaps even there may be a modern innovation.

[2] Ibn Khall. Vol. III. p. 356. Háj. Khalf. Tom. II. p. 542. An-Nawawí, p. ٤٢٨, *et seq.*

[3] Ibn Khall. Vol. II. p. 679. Háj. Khalf. Tom. II. p. 548.

202 (A.D. 817), and died at Basrah in A.H. 275 (A.D. 888).[1]

Abú Âbd ar-Rahman Ahmad Ben Âlí Ben Shuâib an-Nasáï compiled a large work on the traditions which he entitled the Sunan al-Kabír; but as he himself acknowledged that many of the traditions which he had inserted, were of doubtful authority, he afterwards wrote an abridgement of his great work, omitting all those of questionable authenticity: and this abridgement, which he entitled Al-Mujtaba, takes its rank as one of the six books of the Sunnah. An-Nasáï was born at Nasá, a city in Khurásán, in A. H. 215 (A. D. 830), and died at Makkah in A. H. 303 (A. D. 915).[2]

The Kitáb as-Sunan by Abú Âbd Allah Muhammad Ben Yazíd Ben Májah al-Kazwíní, is the sixth book of the Sunnah, and is commonly called the Sunan Ibn Májah. Ibn Májah was born in A. H. 209 (A. D. 824), and died in A. H. 273 (A. D. 886).[3]

These six books are generally known by the name of Al-Kutub as-Sittat fí al-Hadís[4], or the six books on the traditions; but the two first, which are of by far the greatest authority, are, as we have already seen, denoted the Sahíhain, or the two authentic collections.[5] The remaining four are commonly called Al-Kutub al-Arbaa, or the four books. Traditions extracted from these six books are accordingly distinguished by authors who make use of them; those taken from the Sahíhain being called Sahíh, or authentic; whilst those from

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[1] Ibn Khall. Vol. I. p. 589. Háj. Khalf. Tom. III. p. 622. An-Nawawí, p. ٧٠٨.

[2] Ibn Khall. Vol. I. p. 58. Háj. Khalf. Tom. III. p. 626.

[3] Ibn Khall. Vol. II. p. 680. Háj. Khalf. Tom. III. p. 621.

[4] I have learned, from my friend Dr. Sprenger, Principal of the College at Dehli, that editions of Al-Bukhárí, At-Tirmizí, An-Nasáï, and Abú Dáwúd, have lately been published in India. The first is furnished with useful glosses, and is very correct: it is not, however, yet completed. The Sahíh of At-Tirmizí is likewise very correct; but the text of the two latter authors is not so accurate. Dr. Sprenger also says he has heard that the Sahíh of Muslim is in course of publication at Calcutta. None of these most important works have as yet reached this country.

[5] Mishcát ul-Masabih, Vol. I. p. iii. De Sacy Chrest. Arabe, Tome I. p. 408.

the four books are called Hasan, or delivered on respectable authority, having, however, greater weight than if they were derived from any other compilations on the Sunnah. Some authors arrange the six Sahíhs in a different order from that above given.

The style of these six great works is concise and elliptic, but they are generally considered as pure and elegant: they are not easily to be understood without the aid of commentaries; and accordingly a host of learned doctors have undertaken the task of expounding them. Hájí Khalfah enumerates upwards of eighty on the Sahíh al-Bukhárí alone.

In addition to the above-mentioned works, there are an immense number of collections of traditions, of greater or less extent, and which are of various authority, according to the reputation of their authors. Some of these are original; but they consist, for the most part, of selections and epitomes, or condensed abridgements of one or more of the principal works, explaining in many instances the difficult words and passages, and illustrating the traditions severally by the opinions and decisions of jurisconsults. These exist in such numbers, that Hájí Khalfah himself, in that great monument of industry and research, the Kashf az-Zunún, admits that it would be impossible to enumerate them; it will therefore be sufficient to mention a very few of the most important and the more recent.

The Muwatta of Málik Ben Anas, already mentioned, and a collection of traditions called after the name of its author, Abú Muhammad Âbd Allah ad-Dárimí, who died in A. H. 255 (A. D. 868)[1], are by some considered to be respectively entitled to be placed among the six Sahíhs, in the place of the Sunan of Ibn Májah. At any rate the Muwatta is always looked upon as the next in point of authority to the six Sahíhs.[2]

The collections of Abú al-Husain Âlí Ben Ûmr ad-Dári-

[1] Háj. Khalf. Tom. III. p. 628.

[2] See the Mishcat ul-Masábih, p. iii. M. Vincent places the Muwatta amongst the six Sahíhs, without noticing its doubtful title to that position. Études sur la l[illegible] musulmane, p. 31.

kutní who died in A. H. 385 (A. D. 995)[1], and of Abú Bakr Ahmad Ben al-Husain al-Baihakí, who died in A. H. 458 (A. D. 1065)[2], are also of the highest authority.

One of the most celebrated compilations after the Six Sahíhs, is the Masábíh as-Sunnat by Abú Muhammad Husain Ben Masûúd al-Farrá al-Baghawí[3], who died in A. H. 516 (A. D. 1122).[4] This work is principally extracted from the Six Sahíhs, embodying all the authentic traditions, and omitting those which are in any way doubtful: the author, however, has neglected to insert the Isnáds. Al-Baghawí also wrote a Jama bain al-Sahíhain, or Conjunction of the Two Sahís. A work, bearing the same title, by Abú Âbd Allah Muhammad al-Humaidí, who died in A.H. 488 (A.D. 1095)[5], comprehends the collections of Al-Bukhárí and Muslim, and has a great reputation; as is also the case with the copious compilation of Abú al-Hasan Razín Ben Muâáwiyah al-Âbdarí, who died in A. H. 520 (A.D. 1126), and which comprises the works of Al-Bukhárí and Muslim, the Muwatta of Málik, the Jámia at-Tirmizí, and the Sunans of Abú Dáwúd, and An-Nasáï.[6]

Next may be noticed the Jámia al-Usúl by Abú as-Saadat Mubárik Ben Asír al-Jazarí, commonly called Ibn Asír, who died in A.H. 606 (A.D. 1209), a work having great authority[7]; and the Jámia al-Jawámia[8] of the celebrated doctor Jalál ad-Dín Âbd ar-Rahman Ben Abí Bakr as-Suyútí. The latter author omits the Isnáds, but, by the use of abbreviations, designates those traditions which are extracted from the six books of the Sunnat. All the works of As-Suyútí are held in great estimation by the Sunnís. The Rev. Canon Cureton is preparing for publication the text of the Jámia

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[1] Háj. Khalf. Tom. III. p. 628. [2] Háj. Khalf. Tom. III. p. 627.

[3] Matthews calls him Al-Baghdádí, but erroneously. Mishcat ul-Masábih, Vol. I. p. ii. This surname is derived from Bagh or Baghshúr, the name of a town in Khurásán. Ibn Khall. Vol. I. p. 420. Háj. Khalf. Tom. V. p. 564.

[4] Ibn Khall. Vol. I. p. 419. Háj. Khalf. Tom. V. p. 564.

[5] Háj. Khalf. Tom. II. p. 619.

[6] Háj. Khalf. Tom. III. p. 32. [7] Háj. Khalf. Tom. II. p. 501.

[8] Háj. Khalf. Tom. II. p. 614.

as-Saghír of As-Suyútí, which is an abridgment of the Jámia al-Jawámia, arranged in alphabetical order: it will be most acceptable to those Orientalists who wish to study this important and hitherto-neglected branch of Arabic literature.

A commentary on the Hadís al-Arbaîín of Shaikh Ismaîíl Hakkí, entitled the Sharh al-Arbaîín, or Hadís Arbaîín Sharhí, by Mulla Âlí al-Háfiz al-Kastamúmí, was printed and published at Constantinople in the year 1837.[1] Another work, entitled the Karak Suwál, containing forty questions by the Mullá Furatí, with the answers of Muhammad, according to tradition, was also printed in the year 1840, at the same place.[2]

The Mishkát al-Masábíh is a new and augmented edition of the Masábíh of Al-Farrá al-Baghawí, by the Shaikh Walí ad-Dín Abú Abd Allah Muhammad Ben Âbd Allah al-Khatíb, who completed his work in A.H. 737 (A.D. 1336). It is a concise collection of traditions, principally taken from the Six Books, and arranged in chapters according to subjects. This collection has been translated by Captain Matthews[3], and is, I believe, the solitary work that has been as yet published in its entirety, in any European language, on the Îlm al-Hadís; a fact that is to be deeply regretted, when we consider how little the Muhammadan religion and laws are understood, and how greatly they depend upon the science of tradition.

A small work on traditions, entitled the Muntakhab-i Bulúgh al-Marám, which appears to be an abridgment, omitting the Isnáds, of the Bulúgh al-Marám of Shiháb ad-Dín Abú al-Fazl Ahmad al-Âskalání, who died in A.H. 852 (A.D. 1448)[4], has been printed at Calcutta, with an interlinear Urdú translation.[5]

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[1] حديث اربعين شرحي, or شرح الاربعين 4to. Const. A.H. 1253 (A.D. 1837).

[2] قرق سؤال 8vo. Const. A.H. 1256 (A.D. 1840).

[3] Mishcát-ul Masábih, or a collection of the most authentic traditions regarding the actions and sayings of Muhammad. Translated from the Arabic by Captain Matthews. 2 Vols. 4to. Calcutta, 1809—1810.

[4] Háj. Khalf. Tom. II. p. 68.

[5] منتخب بلوغ المرام 8vo. Calcutta, N.D.

Another small collection, entitled Labáb al-Akhbár, and containing three hundred and ninety-five authentic traditions, was published at the same place in the year 1837.[1]

The commentaries on the collections of traditions are not confined to the Six Sahíhs, all the more important compilations of this nature having received illustration from the writings of subsequent lawyers. The Îlm Sharh al-Hadís, or Science of Commentating the Traditions, is reckoned one of the subsidiary branches of the Îlm al-Hadís itself.

The Îlm al-Hadís has occupied the attention of a multitude of Shíâh writers; and a glance at any of the biographical works of that sect is alone sufficient to refute the statement already mentioned, that the followers of Âlí give no authority to the oral law.

One of the earliest writers, both on the Hadís and law of the Imámíyah sect, was Âbd Allah Ben Âlí Ben Abú Shuabah al-Halabí, whose grandfather, Abú Shuabah, is related to have collected traditions in the time of the Imáms Hasan and Husain. Âbd Allah wrote down these traditions, and presented his work, when completed, to the Imám Jaafar as-Sádik, by whom it is said to have been verified and corrected. Abú Muhammad Hishám Ben al-Hákim al-Kindí ash-Shaibání, who lived in the time of the Khalífah Hárún ar-Rashíd, and died in A.H. 179 (A.D. 795), is also famed as being one of the first compilers of Shíâh traditions.

Yúnas Ben Âbd ar-Rahman al-Yuktainí was celebrated as a Shíâh traditionist. Amongst other works, he wrote the Îlal al-Hadís and the Ikhtiláf al-Hadís. This author is said to have made forty-five Hajjs and fifty-four Ûmrats[2] to Makkah, and to have written the surprising number of one thousand volumes, controverting the opponents of the Shíâh doctrines. He died at Madínah, in A.H. 208 (A.D. 823).

These are the earliest writers on the Shíâh Hadís; but it is

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[1] لباب الاخبار 8vo. Calcutta, A.H. 1253 (A.D. 1837.)

[2] The difference between the Hajj and the Ûmrat is, that the former implies a pilgrimage to Makkah, with the performance of all the ceremonies, and the latter merely a visit to the sacred city.

stated that the Shíâhs in India consider four later works as the most authentic: these are called the Kutub-i Arbaa, and are, as it seems, held by them in the same estimation as the Six Sahíhs amongst the Sunnís.[1]

The two first in order of these four books are the Tahzíb al-Ahkám and the Istibsár. They were composed by the Shaikh Abú Jaafar at-Túsí, already mentioned as the author of the Fihrist, and of a voluminous commentary on the Korán.

The third in order of the Kutub-i Arbaa is the Jámia al-Káfí by Muhammad Ben Yaakúb al-Kalíní ar-Rází, who is called the Raïs al-Muhaddisín, or chief of the traditionists. This work is of the highest authority, both in India and Persia: it is of vast extent, comprising no less than thirty books; and its author is said to have employed twenty years in its composition. Al-Kalíní also wrote several other works of less note, and died at Baghdád, in A.H. 328 (A.D. 939).

The fourth of the authentic books on Shíâh tradition is the Man lá Yazarhu al-Fakíh, by the celebrated Abú Jaafar Muhammad Ben Âlí Ben Bábawíyah al-Kumí, already spoken of as the author of two Tafsírs on the Korán. This collection is of great note in Persia, as well as in India. Ibn Babawíyah wrote many other works on tradition, the principal of which, according to Núr Allah, was the Kitáb al-Masábíh. The large number of one hundred and seventy-two works on Law and Hadís are mentioned, on the authority of An-Najáshí, to have been composed by this voluminous writer.

Abú al-Âbbás Ahmad Ben Muhammad, commonly called Ibn Ûkdah, who died in A.H. 333 (A.D. 944), was one of the greatest masters of the science of traditions; and was renowned for his diligence in collecting them, and the long and frequent journeys which he undertook for the purpose of obtaining information on the subject. Ad-Dárakutní, the Sunní traditionist, is reported to have said that Ibn Ûkdah knew three hundred thousand traditions of the Ahl-i Bait and the Bení Háshim.

Âlí Ben al-Husain al-Masûúdí al-Hudaili, the far-famed

[1] Har. Anal. p. 224, note. 2d edit. Harington only gives the titles of these books, and states their repute as authentic, on the authority of Maulaví Siráj ad-Dín Âlí, one of the law officers of the Sudder Dewanny Adawlut.

author of the Marúj az-Zahab, and who has been, with some justice, termed the Herodotus of the East, was also a writer on the Shíâh traditions. He died in A.H. 346 (A.D. 957). Another name, scarcely less celebrated in the annals of Arabic literature, likewise appears amongst the writers on the same subject, viz. that of Abú al-Faraj Âlí Ben al-Husain al-Isfahání, who is said to have devoted fifty years to the composition of the well-known Kitáb al-Aghání, and who died in A.H. 356 (A.D. 966). It is stated that Ad-Dárakutní, and others of the Sunní traditionists, drew largely for their materials from the writings of this last author.

The great Shíâh lawyer, the Shaikh al-Âllámah al-Hillí, the author of the Khulásat al-Akwál, is also a very high authority on tradition. His chief works on the subject are the Istiksá al-Iatibár, the Masábíh al-Anwár, and the Durar wa al-Marján.

Last amongst the writers on the Shíâh Hadís may be placed Abú al-Futúh Rází and Muhammad Bákir Ben Muhammad Takí, whose works, the Kitáb-i Hasaníyah and the Hakk al-Yakín, already described, although in the main controversial, may yet seem properly to be included in the present class, from the number of traditions they comprise. The latter of these authors also composed a work treating exclusively of Hadís, and entitled the Bahár al-Anwár.

III. Having so far described the works on the traditions, it becomes necessary to give some notices of the general Digests and special Treatises, with their Commentaries, which, together, form the third class of law-books, according to the present arrangement, and treat more especially of practical jurisprudence in all its branches. These, as may be imagined, are exceedingly numerous; and it would be impossible, in this place, to give more than the following meagre selection.

The chief works that treat generally of the doctrines of the four principal sects of the Sunnís are mentioned by Hájí Khalfah to be the Jámia al-Mazáhib, the Majmaa al-Khiláfíyát, the Yanábia al-Ahkám, the Ûyún, and the Zubdat al-Ahkám.[1]

[1] Háj. Khalf. Tom. IV. p. 457.

The only one of these works of which I have been able to find a particular description is the Zubdat al-Ahkám, which expounds the practical statutes of the different doctrines of the four Sunní sects, and was written by Siráj ad-Dín Abú Hafs Ûmr al-Ghaznaví, a follower of Abú Hanífah, who died in A.H. 773 (A.D. 1371).[1]

I shall now mention separately the more important of the works of the most celebrated lawyers of each particular sect, since though all the four Sunní sects receive in common the Six Sahíhs, and other collections of their traditions, with a slight preference given by some sects to particular books, it is by no means the case with the law-books of the third class, each sect holding separate doctrines, and referring to distinct authorities. In the enumeration of these works I shall dwell more especially upon those which follow the doctrine of Abú Hanífah, the prevailing Sunní sect in India.

Abú Hanífah's principal work is entitled the Fikh al-Akbar: it treats of the Îlm al-Kalám, and has been commented upon by various writers, many of whom are mentioned by Hájí Khalfah.[2]

The Hanafí sect, as has already been remarked, is the one which obtains most commonly, and indeed almost entirely, amongst the Muhammadans of India; but the doctrines of its great founder are sometimes qualified, in deference to the opinions of two of his most famous pupils. Sir William Jones says, "that although Abú Hanífah be the acknowledged head of the prevailing sect, and has given his name to it, yet so great veneration is shewn to Abú Yúsuf, and the lawyer Muhammed, that, when they both dissent from their master, the Musselman judge is at liberty to adopt either of the two decisions which may seem to him the more consonant to reason, and founded on the better authority."[3]

In former times it seems that Abú Hanífah's opinion was

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[1] Háj. Khalf. Tom. III. p. 533. [2] Háj. Khalf. Tom. IV. p. 457.

[3] Sir William Jones's Works, Vol. III. p. 510. 4to. Lond. 1799. And see a passage from the Tabakát al-Hanafíyat, quoted by Mírzá Kúsim Beg, where the same fact is stated.—Journal Asiatique, 4me Série, Tome XV. p. 203.

preferred, even when both the disciples dissented from him; but this is not the case at the present day. There is also a distinction of authority to be observed, viz. that where the two disciples differ from their master and from each other, the authority of Abú Yúsuf, particularly in judicial matters, is to be preferred to that of Muhammad. In the event, however, of one disciple agreeing with Abú Hanífah, there can be no hesitation in adopting that opinion which is consonant with his doctrine.

Abú Yúsuf Yaakúb Ben Ibráhím al-Kúfí was born in A.H. 113 (A.D. 731), and died at Baghdád, in A.H. 182 (A.D. 798). He was a pupil of Abú Hanífah, and was first appointed to the office of Kází of Baghdád by the Khalífah al-Hádí: subsequently he was raised to the dignity of Kází al-Kuzát, or Chief Civil Magistrate, by the Khalífah Hárún ar-Rashíd, being the first who held that high office. The only work known to have been written by Abú Yúsuf treats of the duties of a magistrate, and is entitled Adab al-Kází.[1] The reputation of this work has been eclipsed by that of another, having a similar title, by Al-Khassáf, which will presently be mentioned. Abú Yúsuf is said to have committed his notes to his pupil, the Imám Muhammad, who made great use of them in the composition of his works.

Abú Âbd Allah Muhammad Ben Husain ash-Shaibání, was born at Wásitah in Îrák al-Ârab, in A.H. 132 (A.D. 749), and died at Ray, the capital of Khurásán, in A.H. 187 (A.D. 802). The Imám Muhammad, as he is most generally called, was a fellow pupil of Abú Yúsuf, under Abú Hanífah, and on the death of the latter pursued his studies under the former. It is also stated, that, in his younger days, he was instructed by the Imám Málik. His chief works are six in number, of which five are considered of the highest authority, and are cited under the title of the Záhir ar-Rawáyát, or Conspicuous Reports.[2]

The Jámia al-Kabír[3], the first of the Záhir ar-Rawáyát, contains a body of most important questions of jurisprudence,

[1] Har. Anal. p. 234, n. 2d edit. Háj. Khalf. Tom. I. p. 219.
[2] Har. Anal. p 230, n. 2d edit. [3] Háj. Khalf. Tom. II. p. 564.

and has been commented upon by many learned doctors, amongst whom we find the well-known Shams al-Aïmmah Abú Bakr Muhammad as-Sarakhsí, who died in A. H. 490 (A. D. 1096), and Burhán ad-Dín Mahmúd Ben Ahmad, each of whom composed a work entitled Al-Muhít, which will be presently noticed.

The Jámia as-Saghír[1], the second of the works of the Imám Muhammad, is perhaps even more celebrated than the Jámia al-Kabír; and it is in its composition that he seems to have been chiefly indebted to Abú Yúsuf. The Commentaries on the Jámia as-Saghír are very numerous: the best known is by As-Sarakhsí, and there is also one of some note by Burhán ad-Dín Âlí, the author of the Hidáyah.

The third work of the Imám Muhammad is the Mabsút fí Furúa al-Hanafíyat[2], which is also of great celebrity, and has received numerous comments.

The Ziyádát fí Furúa al-Hanafíyat[3], the fourth of the Conspicuous Reports, is said to have been composed under the inspection and with the approbation of Abú Yúsuf. It is a work highly esteemed, and, together with its supplement by the same author, has been commented upon by a multitude of writers, amongst whom are As-Sarakhsí, and Kází Khán Hasan Ben Mansúr al-Úzjandí, who died in A. H. 592 (A. D. 1195).

The fifth of the Záhir ar-Rawáyát is called the Siyar al-Kabír wa as-Saghír[4], and is supposed to have been the latest work of its author. The name of Abú Yúsuf nowhere occurs in the Siyar.

The Nawádir, the sixth and last of the known compositions of the Imám Muhammad, though not so highly esteemed as the others, is still greatly respected as an authority.

The next authorities among the Hanafís of India, after the founder of their sect and his two disciples, are the Imám Zufar Ben al-Hazíl, who was Chief Judge at Basrah, where he died in A. H. 158 (A. D. 774)[5], and Hasan Ben Ziyád: these

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[1] Háj. Khalf. Tom. II. p. 553. [2] Háj. Khalf. Tom. V. p. 364.
[3] Háj. Khalf. Tom. III. p. 552. [4] Háj. Khalf. Tom. III. p. 637.
[5] Hamilton's Hedaya, Preliminary Discourse, p. xxxv.

lawyers were contemporaries, friends, and scholars, of Abú Hanífah, and their works are stated to be quoted in India as authorities for that Imám's doctrines, more especially when the two disciples are silent.[1]

In addition to the above, the following are a few of the works according to the doctrines of the Hanafí school, best known, and most frequently referred to in India, or in the works of chief authority in that country.

Abú Bakr Ahmad Ben Ûmr al-Khassáf was the author of the most celebrated of several treatises known by the name of Adab al-Kází. He died in A.H. 261 (A.D. 874). Hájí Khalfah speaks very highly of this work, which contains one hundred and twenty chapters, and has been commented upon by many learned jurists: the most esteemed Commentary is that of Ûmr Ben Âbd al-Âzíz Ben Mázeh, commonly called Husám ash-Shahíd, who was killed in A.H. 536 (A.D. 1141).[2]

Abú Jaafar Ahmad Ben Muhammad at-Tahawí is one of the numerous commentators on the Jámia as-Saghír of the Imám Muhammad: he also wrote an abridgement of the Hanafí doctrines, called the Mukhtasar at-Tahawí. Both works are often quoted as authorities in India, but they are not known to exist in that country at the present day. At-Tahawí died in A.H. 321 (A.D. 933).[3]

The Mukhtasar al-Kudúrí by Abú al-Husain Ahmad Ben Muhammad al-Kudúrí, is among the most esteemed of the works which follow the doctrines of Abú Hanífah, and is of high authority in India: indeed, it is in such general repute, that Hájí Khalfah, when speaking of those several works which are emphatically designated by antonomasia, "Al-Kitáb" or "the Book," says, that if, in matters connected with jurisprudence, such expression be used, it signifies the Mukhtasar al-Kudúrí.[4] It is a general treatise on law, and contains upwards of twelve thousand cases. As may be supposed with

[1] Harington quotes the Fatáwa al-Hammadíyah in proof of this statement. Har. Anal. p. 229. 2d edit.

[2] Háj. Khalf. Tom. I. p. 220. [3] Háj. Khalf. Tom. V. p. 444.

[4] Háj. Khalf. Tom. V. p. 30. De Sacy Authologie Grammaticale Arabe, p. 381.

regard to a work of such celebrity, it has been commented on by numerous writers: several of the Commentaries are quoted in the Fatáwa al-Âálamgírí. Al-Kudúrí died in A.H. 428 (A.D. 1036).[1]

The section of Al-Kudúrí's work relating to the warring against infidels was published in the original, with a Latin translation by Rosenmüller, in the year 1825.[2]

A well-known Commentary on the Mukhtasar al-Kudúrí is entitled Al-Jauharat an-Nayyirat[3], and is sometimes called Al-Jauharat al-Munírat.[4] Bailey says that this work, though of later date than the Hidáyah, is perhaps more valuable in other respects.[5]

Shams al-Aïmmah Abú Bakr Muhammad as-Sarakhsí, mentioned above as the author of comments upon the Jámia al-Kabír and the Jámia as-Saghír of the Imám Muhammad, and of other works, composed, whilst in prison at Úzjand, a law-book of great extent and authority, entitled the Mabsút.[6] He was also the author of the most generally celebrated of the many works entitled Al-Muhít, which is derived in a great measure from the Mabsút, the Ziyádát, and the Nawádir of the Imám Muhammad.[7]

Burhán ad-Dín Mahmúd Ben Ahmad, already spoken of, also wrote a Muhít, which, though known in India, is not so greatly esteemed as the Muhít as-Sarakhsí. The work of Burhán ad-Dín Mahmúd is commonly known as the Muhít al-Burhání, and is taken principally from the Mabsút, the two Jámias, the Siyar, and the Ziyádát, of the Imám Muhammad: the author also made use of the Nawádir of the same doctor in composing his work.[8]

The Shaikh Âlá ad-Dín Muhammad as-Samarkandí composed a compendium of Al-Kudúrí's Mukhtasar, which he

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[1] Ibn Khall. Vol. I. p. 59. De Sacy Chrest. Arabe, Tome II. p. 100. Háj. Khalf. Tom. V. p. 451.

[2] Rosenmüller, Analecta Arabica, Pars. I. 4to. 1825.

[3] Háj. Khalf. Tom. V. p. 452. [4] Háj. Khalf. Tom. II. p. 656.

[5] Baillie's Moohummudan Law of Inheritance, Pref. p. vii.

[6] Háj. Khalf. Tom. V. p. 363. [7] Háj. Khalf. Tom. V. p. 433.

[8] Háj. Khalf. Tom. V. p. 431.

entitled the Tuhfat al-Fukahá.[1] The work of Âlá ad-Dín was commented upon by his pupil Abú Bakr Ben Masûúd al-Káshání, who died in A.H. 587 (A.D. 1191).[2] This comment is entitled Al-Badáïa as-Sanáïa. Both the text and its comment, though not known in India, are often quoted as authorities.

The Hidáyah is the most celebrated law treatise according to the doctrines of Abú Hanífah, and his disciples Abú Yusuf and the Imám Muhammad, which exists in India: it is a Commentary on the Badáïa al-Mubtadá, and both the text and comment are from the pen of Burhán ad-Dín Âlí Ben Abú Bakr al-Marghínání, who, after employing thirteen years in writing the Hidáyah, died in A.H. 593 (A.D. 1196).[3] The divisions and general arrangement of the Hidáyah, are taken from the Jámia as-Saghír of the Imám Muhammad, and it consists of a Digest of approved law cases, illustrated by proofs and arguments. Hájí Khalfah says, in describing the Hidáyah, "it is a practice observed by the composer of this work to state first the opinions and arguments of the two disciples (Abú Yúsuf, and the Imám Muhammad); afterwards the doctrine of the great Imám (Abú Hanífah); and then to expatiate on the proofs adduced by the latter, in such manner as to refute any opposite reasoning on the part of the disciples. Whenever he deviates from this rule, it may be inferred that he inclines to the opinions of Abú Yúsuf and the Imám Muhammad. It is also his practice to illustrate the cases specified in the Jámia as-Saghír and Kudúrí, intending the latter whenever he uses the expression 'he has said in the book.' In praise of the Hidáyah, it has been declared, like the Korán, to have superseded all previous books on the law; that all persons should remember the rules prescribed in it; and that it should be followed as a guide through life."

[1] Háj. Khalf. Tom. II. p. 235 [2] Háj. Khalf. Tom. II. p. 235.

[3] The text of the Hidáyah corresponds generally with Al-Kudúrí, and from this circumstance, and a similar correspondence between it and the text of the Jauharat an-Nayyirat, it may perhaps be inferred that the Mukhtasar al-Kudúrí is really the original text of the Hidáyah. See Baillie, Moohummudan Law of Sale; Preliminary Remarks, p. xv. note.

The same motive which dictated the compilation of the Hindú Code, induced Warren Hastings to recommend that a translation should be made into English of the Hidáyah; and accordingly Mr. Hamilton undertook the task; unfortunately, however, it was suggested by the Muhammadan lawyers who were consulted on the occasion, that inasmuch as the idiom of the author was particularly close and obscure, a Persian version should be first made "under the inspection of some of their most intelligent doctors, which would answer the double purpose of clearing up the ambiguities of the text, and, by being introduced into practice, of furnishing the native judges of the Courts with a more familiar guide, and a more instructive preceptor, than books written in a language of which few of them have opportunities of attaining a competent knowledge."[1] This was accordingly done; and from this Persian translation Mr. Hamilton executed his English version[2], which is thus rendered less to be depended upon, than if it had been made from the original Arabic, without adding in any degree to its intelligibility. The work of Burhán ad-Dín Âlí as we possess it in this translation, is, however, a most useful book, although it contains much that is unimportant, and omits altogether the Law of Inheritance, which is perhaps the most important of all.

The text of the Hidáyah was published in the original Arabic at Calcutta in A.H. 1234 (A.D. 1818)[3], and was again edited, together with its Commentary, the Kifáyah, by Hakím Maulaví Âbd al-Majíd in 1834.[4] The Persian version was also published at Calcutta in the year 1807.[5]

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[1] Hamilton's Hedaya, Prelim. Disc. p. xliv.

[2] The Hedáya, or Guide; a Commentary on the Mussulman laws, translated by Charles Hamilton. 4 Vols. 4to. Calcutta, 1791.

[3] الهداية 2 Vols. Folio, Calcutta, A.H 1234 (A.D. 1818).

[4] الهداية مع شرحها الكفاية في المسائل الفقهيه و دلائلها النقلية و العقلية
The Hidayah, with its Commentary, called the Kifayah, a Treatise on questions of Mohammadan law, published by Hukeem Moulvee Abdool Mujeed. 4 Vols. 4to. Calcutta, 1834.

[5] هدايه فارسي ترجمه كرده مولوي غلام يحيي خان و ديكر علما 4 Vols. 8vo. Calc. A.H. 1221 (A.D. 1807).

A work of such great celebrity and authority as the Hidáyah has of course been illustrated by a large number of Commentaries, the first of which is said to have been written by Hamíd ad-Dín Âlí al-Bukhárí, who died in A.H. 667 (A.D. 1268), and is a short tract entitled the Fawáïd. The glosses of the Hidáyah which are most conspicuous for their reputation in India, are the Niháyah, the Înáyah, the Kifáyah, and the Fath al-Kadír.

The Niháyah of Husám ad-Dín Husain Ben Âlí, who is said to have been a pupil of Burhán ad-Dín Âlí, was the first composed of these; and it is important as supplying the omission of the Law of Inheritance in the Hidáyah, although the chapter on this law is said not to be looked upon as of equal authority with the Faráïz as-Sirájíyah, which will be hereafter described.

There are two Commentaries on the Hidáyah entitled Înáyah[1]; but the one more commonly known by that name was written by the Shaikh Akmal ad-Dín Muhammad Ben Mahmúd, who died in A.H. 786 (A.D. 1384). The Înáyah is much esteemed for its studious analysis and interpretation of the text.

The Arabic text of the Înáyah was published in Calcutta in 1837, edited by Ramdhan Sen.[2]

The third Commentary, the Kifáyah, is by Imám ad-Dín Amír Kátib Ben Amír Umr, who had previously written another explanatory gloss of the same work, and entitled it the Ghâyat al-Bayán. The Kifáyah was finished in A.H. 747 (A.D. 1346), and, besides the author's own observations, gives concisely the substance of other Commentaries.

The original text of the Kifáyah, accompanied by that of the Hidáyah, has been published as mentioned above.

The Fath al-Kadír lil-Âájiz al-Fakír, by Kamál ad-Dín

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[1] Háj. Khalf. Tom. IV. p. 260.

[2] العناية شرح الهداية في المسائل الفقهية و دلائلها النقلية و العقلية Inayah, a Commentary on the Hidayah; a work on Mohammedan Law compiled by Muhammad Akmuloodeen, Ibn Muhmood, Ibn Ahmudonil Hunufee; edited by Moonshee Ramdhun Sen. 4 Vols. 4to. Calcutta, 1837.

Muhammad as-Siwásí, commonly called Ibn Hammám, who died in A.H. 861 (A.D. 1456), is the most comprehensive of all the comments on the Hidáyah, and includes a collection of decisions which render it extremely useful.

The Wáfí by Abú al-Barakát Âbd Allah Ben Ahmad, commonly called Háfiz ad-Dín an-Nasafí, and its Commentary, the Káfí, by the same author, are works of some authority. An-Nasafí died in A.H. 710 (A.D. 1310).

An-Nasafí is also the author of the Kanz ad-Dakáïk[1], a book of great reputation, principally derived from the Wáfí, and containing questions and decisions according to the doctrines of Abú Hanífah, Abú Yúsuf, the Imám Muhammad, Zufar, Ash-Sháfiî, Málik, and others. Many Commentaries have been written on this work: the most famous is the Bahr ar-Ráïk, which may, indeed, almost be said to have superseded it in India. The Bahr ar-Ráïk is by Zain al-Aábidín Ben Nujaim al-Misrí, who died in A.H. 970 (A.D. 1562).[2] He left his work incomplete at his death, but it was finished by his brother, Siráj ad-Dín Ûmr, who also wrote another and inferior Commentary on the same work, entitled the Nahr al-Fáïk.

The Tabyín al-Hakáïk[3], which is another Commentary on the Kanz ad-Dakáïk, was composed by Fakhr ad-Dín Abú Muhammad Ben Âlí az-Zailaíí, who died in A.H. 743 (A.D. 1342), and is in great repute in India, on account of its upholding the doctrines of the Hanafí sect against those of the followers of Ash-Shafiî.

Two other Commentaries on the Kanz ad-Dakáïk deserve mention: one is called the Ramz al-Hakáïk, and is by Badr ad-Dín Mahmúd Ben Ahmad al-Âainí, who died in A.H. 855 (A.D. 1451)[4]; the other is the Matlab al-Fáïk by Badr ad-Dín Muhammad Ben Âbd ar-Rahman ad-Dairí[5]: the latter is much esteemed in India.

The Wikáyah which was written in the seventh century of

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[1] Háj. Khalf. Tom. V. p. 249. [2] Háj. Khalf. Tom. V. p. 250.
[3] Ibid. [4] Ibid.
[5] Háj. Khalf. Tom. V. p. 252. Harington seems to confound these two Commentaries. Har. Anal. p. 238 and note. 2d. edit.

the Hijrah, by Burhán ash-Sharíyat Mahmúd, as an introduction to the study of the Hidáyah, has been comparatively eclipsed by its Commentary, the Sharh al-Wikáyah, by Ûbaid Allah Ben Masûúd, who died in A.H. 750 (A.D. 1349): this author's work combines the original text with a copious gloss explanatory and illustrative. Both the Wikáyah and the Sharh al-Wikáyah are used for elementary instruction in the Muhammadan Colleges. Other Comments on the Wikáyah exist, but they are of no great note.

The Sharh al-Wikáyah has been printed and published at Calcutta.[1]

The Nikáyah is another elementary law book well known in India, and is by the author of the Sharh al-Wikáyah: it is sometimes called the Mukhtasar al-Wikáyah, being, in fact, an abridgement of that work.

The original Arabic text of the Mukhtasar al-Wikáyah, was printed and published at Kasan in the year 1845.[2]

Three Comments on the Nikáyah are much esteemed: they were written respectively by Abú al-Makárim Ben Âbd Allah in A.H. 907 (A.D. 1501), Abú Âlí Ben Muhammad al-Birjindí in A.H. 935 (A.D. 1528), and Shams ad-Dín Muhammad al-Khurásání in A.H. 941 (A.D. 1534).

The Ashbah wa an-Nazáïr is also an elementary work of great reputation by Zain al-Aábidín, the author of the Bahr ar-Ráïk already mentioned. Hájí Khalfah speaks of this work in high terms, and enumerates several Appendices to it that have been composed at different times.[3]

The original text of the Ashbah wa an-Nazáïr was published at Calcutta in the year 1826, edited by Ramdhan Sen[4]; and was again printed at the same place, together

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[1] شرح الوقايه 4to. Calc. N.D.

[2] مختصر الوقايه Kasan, A.H. 1261 (A.D. 1845).

[3] Háj. Khalf. Tom. I. p. 309.

[4] الاشباه و النظائر Al-Ashbaho wa al-Nazaïr, a Treatise on Mohammedan law, originally compiled by Zein al-Abdin Ibne Najim, edited by Munshi Ramdhan Sen. 4to Calc. 1826.

with a Commentary by Ahmad Ben Muhammad al-Hamawí in 1844.[1]

There is a law treatise entitled Núr al-Anwár fí Sharh al-Manár, by the Shaikh Jún Ben Abí Sayyid al-Makkí: it was published at Calcutta in the year 1819.[2]

A small tract on the sources of the law, entitled the Usúl ash-Sháshí, together with an explanatory Commentary, was printed in lithography, at Delhi, in the year 1847.[3]

These are the principal law-books of the third class that are known, and are of authority among the Sunnís of the Hanafí sect in India; but, as may be imagined, it is only a few of these that are quoted in the Courts; the Hidáyah and its comments, illustrated by the books of Fatáwa, generally sufficing to satisfy the Judges, and to offer sufficient grounds on which to base a decision.

Many works according to the doctrines of Abú Hanífah have been written, and are received as authorities in the Turkish empire. These I apprehend would be admissible if quoted in our Courts in India where the parties to a suit are of the Hanafí persuasion.

The most celebrated of these is the Multaka al-Abhár, by the Shaikh Ibráhím Ben Muhammad al-Halabí, who died in A.H. 956 (A.D. 1549). This work, which is an universal code of Muhammadan law, contains the opinions of the four chief Mujtahid Imáms, and illustrates them by those of the principal jurisconsults of the school of Abú Hanífah. It is more fre-

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[1] الاشباه و النظائر مع شرحه الحموي في المسائل الفقهية علي المذهب الحنفية اما المتن فهو لافضل المتاخرين مولانا زين العابدين ابراهيم المشتهر بابن نجيم المصري الحنفي و اما الشرح فهو لمولانا السيّد احمد بن محمّد الحنفي الحموي 4to Calcutta, A.H. 1260 (A.D. 1844).

[2] نور الانوار في شرح المنار Fol. Calcutta, 1819.

[3] هذا الكتاب المعروف باصول الشّاشي 8vo. Dehli, A.H. 1264 (A.D. 1847).

quently referred to as an authority throughout Turkey, than any other treatise on jurisprudence.[1]

The Multaka al-Abhár was published in the original Arabic, at Constantinople, in A.H. 1251 (A.D. 1835)[2]; and a Commentary on it, entitled the Majmaa al-Anhár, by Âbd ar-Rahman Ben Shaikh Muhammad, commonly known by the name of Shaikh Zádah, was published at the same metropolis, in A.H. 1240 (A.D. 1824).[3] A Turkish translation, accompanied by a commentary by Muhammad Mavkúfátí, called after his name, Al-Mavkúfátí[4], appeared at Búlák, in the year 1838. The Multaka has been also translated, in a great part, into French, and constitutes the basis of D'Ohsson's magnificent work on the Ottoman Empire.

The Durar al-Hukkám, by Mullá Khusrú, who died in A.H. 885 (A.D. 1480), is a Commentary upon a law treatise by the same author, entitled the Ghurar al-Ahkám. Mullá Khusrú, who is one of the most renowned of the Turkish jurisconsults, completed his work in A.H. 883 (A.D. 1478). It is very voluminous, and, as an authority, is second only to the Multaka al-Abhár, which is preferred to it chiefly on account of its comparative brevity.[5]

The text of the Durar al-Hukkám was published at Constantinople in the year 1844.[6] A Turkish translation of this Commentary, accompanied by the Arabic text of the Ghurar al-Ahkám, appeared previously, at the same place, in the year 1842.[7]

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[1] D'Ohsson, Tableau General de l'Empire Othoman. Tome I. Introd. Sect. III.

[2] ملتقي الابحار 4to. Constantinople, A.H. 1251 (A.D. 1835).

[3] مجمع الانهار 4to. Constantinople, A.H. 1240 (A.D. 1824).

[4] الموقوفاتي Folio. Búlák, A.H. 1254 (1838).

[5] Journal Asiatique, 4me Série. Tome III. p. 216.

[6] درر الحكّام في شرح غرر الاحكام 4to. Constantinople, A.H. 1260 (A.D. 1844).

[7] ترجمه درر الحكّام في شرح غرر الاحكام Folio. Constantinople, A.H. 1258 (A.D. 1842).

A tract on Penal Laws, in Turkish, was published at Constantinople, in A.H. 1254 (A.D. 1838): it is entitled Kánún Námeh-i Jazá.[1] The penal clauses in the Khatt-i Sharíf have been twice printed; once in Turkish[2], published at Constantinople in 1841; and again in Turkish, with a German translation by Petermann[3], published at Berlin in the following year.

It will be unnecessary to dwell at any length upon the books which have been composed according to the doctrines of the three other principal Sunní sects.

I have already mentioned, that the sect founded by Málik Ben Anas is not known to prevail in any part of India; but the student of Muhammadan law will consult with interest two treatises which have lately appeared in France on the Málikí doctrines.

The first of these was published in 1842, by M. Vincent.[4] It contains a short account of the origin of the Málikí doctrine, principally derived from Al-Makrízí[5], a description of the most noted works treating of that doctrine[6], and a translation of the chapter on Criminal Law, taken from the Risálah of Abú Muhammad Âbd Allah Ben Abú Zaid al-Kairuwání.[7] The preliminary matter in M. Vincent's treatise is very interesting.

The second, which is a French translation, by M. Perron, of the Muktasar of Khalíl Ibn Ishák, is now in progress: two volumes have already appeared, and were published, respectively, in the years 1848 and 1849.[8] The Mukhtasar is a work pro-

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[1] قانون نامهٔ جزاء 8vo. Const. A.H. 1254 (A.D. 1839).

[2] صورت خطّ شريف Const. A.H. 1251 (A.D. 1841.)

[3] Beiträge zu einer Geschichte der neuesten Reformen des osmanischen Reiches, enthaltend den Hattischerif von Gûlhane, den Ferman von 21 Nov. 1839 und das neueste Strafgesetzbuch, türkisch und deutsch, in Verbindung mit Ramis Effendi herausgegeben von J. H. Petermann. 8vo. Berl. 1842.

[4] Études sur la Loi Musulmane (Rit de Malek) Législation Criminelle. Par M. B. Vincent. 8vo. Paris. 1842.

[5] Ibid. p. 13. [6] Ibid. p. 31. [7] Ibid. p. 63.

[8] Précis de Jurisprudence Musulmane selon le Rite Mâlékite. Par Khalil Ibn Ishâk. Traduit de l'arabe par M. Perron. Paris. Imp. 8vo. Tomes I. et II. 1848—49.

fessedly treating of the law according to the Máliki doctrines. M. Perron's version has been undertaken by order of the French Government, for the especial use of those who are employed in the administration of justice in Algeria, and is the more valuable, as the translator has not confined himself to a bare translation of the original text, but has illustrated all the obscure passages by introducing explanations from the different commentators on the work. When finished, it will present the first complete translation of a general treatise on Muhammadan jurisprudence that has as yet appeared. The typographical excellence of the volumes, combined with their lowness of price, do honour to the liberality of the French Government.

The works of MM. Vincent and Perron are peculiarly worthy of notice as being the first, and indeed the only ones, devoted to the explanation of the Sunní doctrines other than those of Abú Hanífah, that have been published in any European language.

'Ash-Sháfiî, the third of the chief Mujtahid Imáms, and the preceptor of Ibn Hanbal, besides the works on the traditions already noticed, is said to have composed a most excellent treatise on jurisprudence, entitled Al-Fikh al-Akbar; but it has been questioned whether he was the author.[1] Abú Ibráhím Ismaîîl Ben Yahya al-Muzaní, who was a distinguished disciple of Ash-Sháfiî, and a native of Egypt, was the most celebrated amongst that doctor's followers for his acquaintance with the legal system and juridical decisions of his preceptor, and for his knowledge of the traditions. Amongst other works, he wrote the Mukhtasar, the Mansúr, the Rasáïl al-Muatabira, and the Kitáb al Wasáïk. The Mukhtasar is the basis of all the treatises composed on the legal doctrines of Ash-Sháfiî, who himself entitled Al-Muzaní "the champion of his doctrine." Al-Muzaní died in A.H. 264 (A.D. 877).[2]

The writings of the followers of Ibn Hanbal are few in number, and it will be needless to mention any of them in this place, as they are never quoted in India, where his sect is not found to prevail.

[1] Háj. Khalf. Tom. IV. p. 459.
[2] Ibn Khall. Vol. I. p. 200. Háj. Khalf. Tom. V. p. 459.

The Shíâh works of the third class are, perhaps, not so numerous in proportion to those of the Sunnís, as are their works on the traditions, the writers of the Shíâh sects having expended more labour upon theological controversy, and that portion of the law immediately connected with the doctrines of their faith and their religious observances, than upon those branches which treat of civil and criminal jurisprudence. The materials for a description of this class of law-books are scanty. Núr Allah gives little more than their names, which, as is most frequently the case with regard to the titles of oriental works, afford scarcely any information as to their nature: in addition to this, MSS. of Shíâh law-books are rarely to be met with in any of our libraries.

Âbd Allah Ben Âlí al-Halabí was one of the first writers on Shíâh jurisprudence as he was amongst the earliest compilers of the traditions of that sect. It does not appear, however, that any of his legal compositions are extant.

Yúnas Ben Âbd ar-Rahman al-Yuktainí, who has been spoken of as a writer on traditions, composed a number of law treatises of the present class. The most famous is entitled the Jámia al-Kabír.

Abú al-Hasan Âlí Ben al-Husain al-Kumí, commonly called Ibn Bábawíyah, who died in A.H. 329 (A.D 940), was the author of several works of note, one of which is called the Kitáb ash-Sharáïa. This writer is looked upon as a considerable authority, although his fame has been almost eclipsed by his more celebrated son, Abú Jaafar Muhammad, already mentioned as a traditionist. When these two writers are quoted together, they are called the two Sadúks. The best known of the law-books of the present class, composed by Abú Jaafar, is the Maknaa fí al-Fikh. Abú Jaafar is said to have written in all one hundred and seventy-two works, and to have been especially skilled in Ijtihád.

Abú Âbd Allah Muhammad Ben Muhammad an-Nuamání, surnamed the Shaikh Mufíd and Ibn Muallim, was a renowned Shíâh lawyer. Abú Jaafar at-Túsí describes him in the Fihrist as the greatest orator and lawyer of his time, the most eminent Mujtahid, the most subtle reasoner, and the chief of all those who

delivered Fatwas. Ibn Kasír ash-Shámí relates, that when he died—an event which took place in A.H. 413, or, as some say, in 416 (A.D. 1022—1025)—Ibn an-Nakíb, who was one of the most learned of the Sunní doctors, adorned his house, told his followers to congratulate him, and declared, that since he had lived to see the death of the Shaikh Mufíd he should himself leave the world without regret. The Shaikh Mufíd is stated to have written two hundred works, amongst which, one called the Irshád is well known. These are all enumerated in the Majális al-Múminín, on the authority of the Shaikh Najáshí. When the Shaikh Mufíd is quoted in conjunction with Abú Jaafar at-Túsí they are spoken of as the two Shaikhs.

Abú Jaafar Muhammad at-Túsí, who has been already noticed as a writer on biography, a commentator on the Korán, and one of the most distinguished of the Shíâh compilers of traditions, is also of the highest authority as an author of the present class of law-books. His chief works are the Mabsút and the Khiláf, which are held in great estimation, as are also the Niháyah and the Muhít, by the same author. The Risálat-i Jaafaríyah is likewise a legal treatise by At-Túsí which is frequently quoted.

The most generally known of all the Shíâh lawyers is the Shaikh Najm ad-Dín Abú al-Kásim Jaafar Ben Muayyid al-Hillí, commonly called the Shaikh Muayyid. He died in A.H. 676 (A.D. 1277). His great work, the Sharáïa al-Islám, is more universally referred to than any other Shíâh law-book, and is the chief authority for the law of the Indian followers of Âlí.

The original text of the Sharáïa al-Islám was edited in Calcutta, by Maulaví Sayyid Aulád Husain and Maulaví Zahúr Âlí, and published in the year 1839.[1]

A valuable and voluminous Commentary upon the Sharáïa

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[1] كتاب شرائع الاسلام في بيان مسائل الحلال و الحرام من تصانيف المولانا المحقّق ابي القاسم الحلّي The Sharaya ool Islám, a treatise "on lawful and forbidden things," by Abool Kasim of Hoolla. Edited by Moolvee Seyud Oulad Hosein and Moolvee Zuhoor Ulee. 4to. Calcutta, 1839.

al-Islám, entitled the Masálik al-Afhám, was written by Zain ad-Dín Âlí as-Sáílí, commonly called the Second Sahíd.

Yahya Ben Ahmad al-Hillí, who was celebrated for his knowledge of traditions, and who died in A.H. 679 (A.D. 1280), is well known amongst the Imámíyah sect for his works on jurisprudence. The Jámia ash-Sharáïa and the Mudkhal dar Usúl-i Fikh are in the greatest repute.

The Shaikh al-Âllámah Jamál ad-Dín Hasan Ben Yúsuf Ben al-Mutahhir al-Hillí is called the chief of the lawyers of Hillah. He has been already mentioned as the author of the Khulásat al-Akwál; nor is his name second to any other as a writer of the present class of Shíâh law-books, his legal works being very numerous, and frequently referred to as authorities of undisputed merit. The most famous of these are the Talkhís al-Mirám, the Ghâyat al-Ahkám, and the Tahrír al-Ahkám, which last is a justly celebrated work. The Mukhtalaf ash-Shíâh is also a well-known composition of this great lawyer; and his Irshád al-Azhán is constantly quoted as an authority, under the name of the Irshád-i Âllámah.

The Jámia-i Âbbásí is a concise and comprehensive treatise on Shíâh law, in twenty books.[1] It is generally considered as the work of Bahá ad-Dín Muhammad Âámilí, who died in A.H. 1031 (A.D. 1621); but that lawyer only lived to complete the first five books, dedicating his work to Sháh Âbbás II. The remaining fifteen books, as I have ascertained from a MS. preserved in the Radcliffe Library at Oxford, and forming part of the collection procured in the East by Mr. James Fraser[2], were subsequently added by Nizám Ibn Husain as-Sáwaí. This fact is not mentioned in the only other MS. of the entire work which I have met with; but in the Fraser MS., which comprises two volumes, the first containing the first five books, there is a distinct Preface to the sixth book, where it is ex-

[1] This work must not be confounded with another under the same title, which is an abridgement of the Fatáwa-i Muhammadí by Âbd ar-Rahman Âbbás, and is dedicated to Típú Sultán. See Stewart's Catalogue of the Library of Tippoo Sultan, p. 157, No. XCIII.

[2] MS. I. 4—25. And see Fraser's Catalogue at the end of his History of Nádir Sháh, p. 32. 8vo. Lond. 1742.

pressly stated; and it is corroborated by the existence of a MS. in the Library of the East-India Company[1], which contains the first five books only of the Jámia-i Âbbásí, illustrated with notes, forming a perpetual commentary, taken from the principal Shíâh law authorities, by Îzz ad-Dín Muhammad Ben Mír Abú al-Husainí al-Musawí, who entitled his work the Majmua-i Izdiyád.

Two more modern Shíâh works of the present class are deserving of notice: these are, the Mufátih, by Muhammad Ben Murtaza, surnamed Muhsan, and a Commentary on that work by his nephew, who was of the same name, but surnamed Hádí.

The Mukhtasar-i Náfia is a Shíâh law treatise very frequently quoted, but I have not been able to discover the name of its author.

A general digest of the Imámíyah law in temporal matters was compiled under the superintendence of Sir William Jones, the text of which still remains in MS. The first portion of this Digest was translated by Colonel Baillie[2], who introduced some valuable additions, particularly the ninth and tenth books, which are translated from the Tahrír al-Ahkám of Âllámah al-Hillí. It is greatly to be regretted that this work was not completed, and that the Preliminary Discourse promised, and so frequently referred to by the translator in the first volume, was never published, as there can be no doubt that Colonel Baillie's extensive knowledge and means of acquiring information on the subject would have supplied the numerous and unavoidable deficiencies of the present imperfect sketch of the authorities of Shíâh law.

IV. The works which treat separately and especially of the Îlm al-Faráïz, or science of dividing inheritances, are not

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[1] MS. No. 1980.

[2] A Digest of Mohummudan Law, according to the tenets of the twelve Imams, compiled under the superintendence of Sir William Jones, extended so as to comprise the whole of the Imameea code of jurisprudence in temporal matters, and translated from the original Arabic, by order of the Supreme Government of Bengal, by Captain John Baillie. In 4 Vols. Vol. I. (all published). 4to. Calcutta, 1805.

numerous in India, the Sirájíyah, and its Commentary the Sharífíyah, being almost the only books on the subject referred to by the lawyers of the Hanafí school.

Abú Saad Zaid Ben Sábit, one of Muhammad's Ansárs, or allies, who died at Madínah in A.H. 54 (A.D. 673), is the earliest authority on the Îlm al-Faráïz, and may be called the father of the law of inheritance. Muhammad is reported to have said to his followers, "The most learned among you in the laws of heritage is Zaid"; and the Khalífahs Omar and Othmán considered him without an equal as a Judge, a jurisconsult, a calculator in the division of inheritances, and a reader of the Korán.[1]

The Imám Muwaffik ad-Dín Abí Âbd Allah Muhammad Ben Âlí ar-Rahabí, surnamed Ibn al-Mutakannah, wrote a short treatise, entitled the Bighyat al-Báhis, consisting of memorial verses, which are nearly unintelligible from their conciseness, and which give an epitome of the law of inheritance according to the doctrine of Zaid Ben Sábit. This doctrine, which was partly exploded by Abú Hanífah, is still looked upon with respect by all writers on Faráïz: it cannot, however, be said, so far as we know, to belong to any particular sect, unless, indeed, it be that of Ash-Sháfiî, who, it seems, took Zaid Ben Sábit for his chief guide. For this reason I place the Bighyat al-Báhis as the first in order of these separate works on the Îlm al-Faráïz, although I have not been able to ascertain the period when its author flourished.

Sir William Jones published the text of the Bighyat al-Báhis, accompanied by a literal translation, which is almost as obscure as the original.[2] In the Preface to this work the learned translator falls into error, by stating, that as the author "was himself an Imam, his decisions on that account are considered binding by the sect of Ali, which the Indian as well as the Persian

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[1] De Slane in Ibn Khall. Vol. I. p. 372, note 2. An-Nawawí, p. ٢٥٩.

[2] بغيت الباحث The Mohammedan Law of Succession to the Property of Intestates, in Arabick; with a Verbal Translation and Explanatory Notes. By William Jones, Esq. 4to. Lond. 1782. Sir William Jones's Works, Vol. III. p. 467. 4to. Lond. 1799.

Mahomedans profess."[1] Now, setting aside the fact that the Shíâh faith has never at any time had great weight in India, where, even at Lakhnau, "the seat of heterodox Majesty itself," the tenets of the Sunnís are adhered to[2], the mere circumstance of Ibn al-Mutakannah being denominated "Al-Imám," would be in itself sufficient to prove that he was *not* a Shíâh writer, since that title, as we have seen, is considered by the Shíâhs to be sacred, and is never applied by them to any other than Âlí and his immediate descendants. Moreover, the 8th, 9th, and 10th pages of the Bighyat al-Báhis[3], if they can be construed to mean any thing, seem to point at the doctrine of the Increase—a doctrine which is not admitted by the Shíâh lawyers.

The highest authority on the law of inheritance amongst the Sunnís of India is the Sirájíyah, which is sometimes called the Faráïz as-Sajáwandí, and was composed by Siráj ad-Dín Muhammad Ben Âbd ar-Rashíd as-Sajáwandí, but at what precise time is uncertain. The Sirájíyah has been commented upon by a vast number of writers, upwards of forty being enumerated in the Kashf az-Zunún.[4] The most celebrated of these Commentaries, and the one most generally employed to explain the text, is the Sharífíyah by Sayyid Sharíf Âlí Ben Muhammad al-Jurjání, who died in A.H. 814 (A.D. 1411).[5]

The original text of the Sirájíyah, together with that of the Sharífíyah was published in Calcutta in A.H. 1245 (A.D. 1829).[6] A Persian translation of the Sirájíyah and Sharífíyah, by Maulaví Muhammad Ráshid, was made by order of Warren Hastings, in pursuance of his plan for rendering the native laws accessible to those to whom the administration of justice was entrusted; and although Sir William Jones has

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[1] Sir W. Jones' Muhammadan Law of Succession, Preface.—Sir W. Jones' Works, Vol. III. p. 470. 4to. Lond. 1799.

[2] Macnaghten, Principles and Precedents of Moohummudan Law, Preface, p. xii.

[3] Sir W. Jones' Works, Vol. III. p. 499, *et seq.* 4to. Lond 1799.

[4] Háj. Khalf. Tom. IV. p. 399. [5] Háj. Khalf. Tom. IV. p. 401.

[6] الفرايض السجاوندي 8vo. Calc. A.H. 1245 (A.D. 1829).

spoken in terms of disparagement of this translation[1], it bears testimony to the active interest taken by the illustrious Governor-General in the welfare and happiness of the Musulmán portion of the population of India. The text of this Persian version was published in Calcutta in the year 1812[2] by Muhammad Ráshid. The text and translation of the Sirájíyah, together with an abstract of the Sharífíyah, published by Sir William Jones, are well known.[3] The learned Judge has executed his task with his accustomed ability; but although he blames, with apparent reason, the diffuseness of the Persian translator, it may be doubted whether he himself has not erred in the opposite extreme. Mr. Neil Baillie has well observed of Sir William Jones' translation: "The Sirajiyyah is very brief and abstruse; and, without the aid of a Commentary, or a living teacher to unfold and illustrate its meaning, can with difficulty be understood even by Arabic scholars. It is therefore not a matter of surprise that its translation by Sir William Jones should be almost unknown to English lawyers, and be perhaps never referred to in His Majesty's Supreme Courts of Judicature in India. With the assistance of the Shureefeea, it is brought within the reach of the most ordinary capacity; and if the abstract translation of that Commentary, for which we are also indebted to Sir William Jones, had been more copious, nothing further would have been requisite to give the English reader a complete view of this excellent system of inheritance."[4] Mr. Baillie himself subsequently supplied this desideratum by his admirable treatise on the law of Muhammadan Inheritance, which will be noticed hereafter in speaking of the European works on the Musulmán law. Until the appearance of this last treatise, Sir William Jones' translation of the Sirájíyah

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[1] Sir W. Jones' Works, Vol. III. p. 508. 4to Lond. 1799.

[2] فرايض سراجيّه فارسي با فوايد شريفيّه ترجمه كرده مولوي محمّد راشد 8vo. Calc. A.H. 1227 (A.D. 1812).

[3] Al-Sirájiyyah, or the Mohammedan Law of Inheritance, with a Commentary by Sir William Jones. Fol. Calcutta, 1792. (Text and Translation). Sir W. Jones' Works, Vol. III. p. 503. 4to Lond. 1799.

[4] Baillie's Moohummudan Law of Inheritance. Introduction, p. i.

was undoubtedly of considerable utility to the English Judge, as supplying in a great measure the omission in the Hidáyah; but it has been quite superseded by Mr. Baillie's clear and comprehensive exposition of this intricate and important branch of the Muhammadan law.

The most celebrated Commentaries on the Sirájíyah next after the Sharífíyah, although perhaps not much known in India, may be here noticed. These are, that by Shiháb ad-Dín Ahmad Ben Mahmúd as-Síwásí, who died in A.H. 803 (A.D. 1400), and which has a great and general reputation; one by Burhán ad-Dín Haidar Ben Muhammad al-Harawí, who died about A.H. 830 (A.D. 1426), which is famous for being of great excellence, though small in volume[1]; another by Shams ad-Dín Muhammad Ben Hamzah al-Fanárí, who died in A.H. 834 (A.D. 1430), and whose work is considered to be one of the best of the glosses on the Sirájíyah[2]; and lastly, a Persian Commentary entitled Al-Faráïz at-Tájí fí Sharh Faráïz as-Sirájí, by Âbd al-Karím Ben Muhammad al-Hamadání.[3]

Burhán aḍ-Dín al-Marghínání, the author of the Hidáyah, also wrote a work on Inheritance entitled the Faráïz al-Ûsmání, which has been illustrated by several comments.[4]

The Faráïz-i Irtizíyah is a concise treatise in Persian on the law of Inheritance, which appears to be the principal authority of that law in the Dakhin[5]: its author is Irtizá Âlí Khán Bahádur.

The Faráïz-i Irtizíyah was printed at Madras, but without a date.[6] I have never been able to meet with this work.

The following separate treatises on the law of Inheritance according to Ash-Sháfi'í's doctrine may be mentioned:—Al-Faráïz al-Fárikíyah, by Shams ad-Dín Muhammad Ben Killáyí, who

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[1] Háj. Khalf. Tom. IV. p. 400. [2] Háj. Khalf. Tom. IV. p. 401.
[3] Háj. Khalf. Tom. IV. p. 404. [4] Háj. Khalf. Tom. IV. p. 405
[5] M. Eugène Sicé mentions this work as an authority amongst the *Shiâhs* of Pondicherry; but he has given extracts from it, quoting the opinions of the Sunní Imáms, which sufficiently prove that it cannot be considered as a guide by any of the true followers of Âlí.—See the Journal Asiatique, 3me Série. Tome XII. p. 185 *et seq.*
[6] فرايض ارتضيه Madras, N. D.

died in A.H. 777 (A.D. 1375). The Faráïz al-Fazárí, by Burhán ad-Dín Abú Ishák al-Fazárí, commonly called Ibn Firkáh, who died in A.H. 729 (A.D. 1328). The Faráïz al-Mutawallí, by Abú Saîíd Âbd ar-Rahman Ben Mámún al-Mutawallí, who died in A.H. 478 (A.D. 1085); and the Faráïz al-Mukaddasí, by Abú al-Fazl Âbd al-Malik Ben Ibráhím al-Hamadání al-Mukaddasí, and Abú Mansúr Âbd al-Káhir al-Baghdádí, who died respectively in A.H. 489 and 429 (A.D. 1095 and 1037).[1]

The earliest treatises on the Îlm al-Faráïz by Shíâh writers appear to have been written by Âbd al-Âzíz Ben Ahmad al-Azadí, and Abú Muhammad al-Kindí, the latter of whom lived in the reign of Hárún ar-Rashíd. The best known and most esteemed are the Ihtijáj ash-Shíâh, by Saad Ben Âbd Allah al-Ashârí, who died in A.H. 301 (A.D. 913); the Kitáb al-Mawáris, by Abú al-Hasan Âlí Ben Bábawíyah; and the Hamal al-Faráïz, and the Faráïz ash-Sharîíyah, by the Shaikh Mufíd.

Abú Jaafar Muhammad at-Túsí, who, in addition to his general works on the Korán, the Hadís, and jurisprudence, wrote separate treatises on almost every branch of Shíâh law, has left a work on Inheritance entitled Al-Íjáz fí al-Faráïz.

V. Having described to this extent the comments on the Korán, the books of traditions, and the general and particular treatises on jurisprudence and special laws of the different sects, the fifth class of works, which treat of the Îlm al-Fatáwa, or science of decisions, remains to be noticed. These are very numerous, amounting to several hundreds: the greater portion, however, are either unknown, or never used in India.

Almost all these collections have the title of Fatáwa, but some appear under other designations. Some give the decisions of particular lawyers, or those found in particular books; others, those which tend to illustrate the doctrines of the several sects; whilst others again are devoted to recording the opinions of learned jurists, who were natives or residents of certain

[1] Háj. Khalf. Tom. IV. pp. 408. 410.

places, or lived at certain times. It will be necessary here to mention only a few of these works.

The Khulásat al-Fatáwa by the Imám Iftikhár ad-Dín Táhir Ben Ahmad al-Bukhárí, who died in A.H. 542 (A.D. 1147), is a select collection of decisions of great authority.[1] Iftikhár ad-Dín was also the author of the Khizánat al-Wákiâát, and the Kitáb an-Nisáb, on which books the Khulásat was grounded, and to which many subsequent collections of decisions are indebted for numerous valuable cases.

The Zakhírat al-Fatáwa sometimes called the Zakhírat al-Burháníyah, by Burhán ad-Dín Ben Mázah al-Bukhárí, the author of the Muhít al-Burhání, is also a celebrated, though not a large collection of decisions, principally taken from the Muhít.[2]

The Fatáwa Kází Khán, or collection of decisions of the Imám Fakhr ad-Dín Hásan Ben Mansúr al-Úzjandí al-Farghání, commonly called Kází Khán, who died in A.H. 592 (A.D. 1195), is a work held in the highest estimation in India, and indeed is received in the Courts as of equal authority with the Hidáyah of Burhán ad-Dín Âlí, with whom Kází Khán was a contemporary: it is replete with cases of common occurrence, and is therefore of great practical utility, the more especially as many of the decisions are illustrated by the proofs and reasoning on which they are founded. Yúsuf Ben Junaid, generally known by the name of Akhí Chalabí at-Túkátí, epitomised Kází Khán's work, and compressed it into one volume.[3]

The Fatáwa Kází Khán was lithographed and published in the original at Calcutta in the year 1835.[4]

The Fatáwa az-Zahíríyah was written by Zahír ad-Dín Abú Bakr Muhammad Ben Ahmad al-Bukhárí, who died in A.H. 619 (A.D. 1222). His decisions were collected partly from the Khizánat al-Wákiâát, and his work has again become one of the

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[1] Háj. Khalf. Tom. III. p. 165. [2] Háj. Khalf. Tom. III. p. 327.
[3] Háj. Khalf. Tom. IV. p. 365.
[4] فتاوي قاضيخان در فقه حنفي Futawa Qazee Khan on the Institutes of Aboo Hunceefa Edited by Moulvee Mohummud Mooraud, Moulvee Hafiz Ahmud Kubeer, Moulvee Mohummud Soliman, Moulvee Ghollam Issa, and Moulvee Tumeezoodeen Aizanee. 4 Vols. 8vo. Calcutta.

bases of other collections. Badr ad-Dín Abú Muhammad Mahmúd Ben Ahmad al-Âiní, who died in A.H. 855 (A.D. 1451), compiled a collection selected from this and other old works of the same nature, entitled the Masáïl al-Badríyah.[1]

The Fusúl al-Isturúshí[2] was written by Muhammad Ben Mahmúd, commonly called Al-Isturúshí, in A.H. 625 (A.D. 1227), and is principally restricted to decisions respecting mercantile transactions.

The Fusúl al-Îmádíyah, by Abú al-Fath Muhammad Ben Abú Bakr al-Marghínání as-Samarkandí, was composed in A.H. 651 (A.D. 1253).[3] It comprises forty sections containing decisions respecting mercantile matters, and, being left incomplete at the author's death, was finished by Jamál ad-Dín Ben Îmád ad-Dín.

The Fusúl al-Îmádíyah was lithographed and published in the original at Calcutta in the year 1827.[4]

These two last-mentioned works were incorporated in a collection entitled the Jámia al-Fusúlain[5], which is a work of some celebrity: it was composed by Badr ad-Dín Mahmúd, known by the name of Ibn al-Kází Simáwanah, who died in A.H. 823 (A.D. 1420).

The Kunyat al-Munyat is a collection of decisions of considerable authority by Mukhtár Ben Mahmúd Ben Muhammad az-Záhidí Abú ar-Rijá al-Ghazmíní, surnamed Najm ad-Dín, who died in A.H. 658 (A.D. 1259).[6]

The original text of the Kunyat al-Munyat was published at Calcutta in the year 1829.[7]

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[1] Háj. Khalf. Tom. IV. p. 362. [2] Háj. Khalf. Tom. IV. p. 432.
[3] Háj. Khalf. Tom. IV. p. 440.
[4] فتاوي فصول الاحكام في اصول الاحكام المعروف بفصول عمادي من مؤلّفات علامة الدّهر فهامة العصر لجهبذ الاكرم الاستاد الاعظم مورد نزول مزاحم الربّاني ابي الفتح بن ابي بكر بن عبد الجليل المرغيناني 2 Vols. 8vo. Calc. A.H. 1243 (A.D. 1827).
[5] Háj. Khalf. Tom. II. p. 562. [6] Háj. Khalf. Tom. IV. p. 572.
[7] النسخة المسمّاة بالقنية المنية لتتميم الغنية من تصانيف مختار بن محمود بن محمّد الزّاهدي ابي الرّجا الغزميني الامام العلامة الملقّب بنجم الدّين 4to. Calc. A.H. 1245 (A.D. 1829).

An-Nawawí, the author of the Biographical Dictionary the Tahzíb al-Asmá, who died in A.H. 677 (A.D. 1278), made a collection of decisions of some note, which is called the Fatáwa an-Nawawí. He also composed a smaller work of the same nature, entitled Ûyún al-Masáïl al-Muhimmat, arranged in the manner of question and answer.[1]

The Khizánat al-Muftiyín, by the Imám Husain Ben Muhammad as-Samâání, who completed his work in A.H. 740 (A.D. 1339)[2], contains a large quantity of decisions, and is a book of some authority in India.

The Khizánat al-Fatáwa, by Ahmad Ben Muhammad Ben Abí Bakr al-Hanafí[3], is a collection of decisions made towards the end of the eighth century of the Hijrah, and comprises questions of rare occurrence. It is known and referred to in India.

The Fatáwa Tátárkháníyah was originally a large collection of Fatwas in several volumes, by the Imám Âálim Ben Âlá al-Hanafí, taken from the Muhít al-Burhání, the Zakhírat, the Kháníyah, and the Zahíríyah. Afterwards, however, a selection was made from these decisions by the Imám Ibráhím Ben Muhammad al-Halabí, who died in A.H. 956 (A.D. 1549), and an epitome was thus formed, which is in one volume, and still retains the title of Tátárkháníyah.[4]

The Fatáwa Ahl Samarkand is a collection of the decisions of those learned men of the city of Samarkand who are omitted, or lightly passed over, in the Fatáwa Tátárkháníyah and the Jámia al-Fusúlain[5], to both of which works it may be considered a supplement.

The Fatáwa az-Zainíyah contains decisions by Zain al-Âábidín Ibráhím Ben Nujaim al-Misrí, the author of the Bahr ar-Ráïk and the Ashbah wa an-Nazáïr. They were collected by his son Ahmad about A.H. 970 (A.D. 1562).[6]

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[1] Háj. Khalf. Tom. IV. pp. 292, 369. Wüstenfeld, Ueber das Leben und Schriften des Scheich el-Nawawi, pp. 53, 54.

[2] Háj. Khalf. Tom. III. p. 136.

[3] Háj. Khalf. Tom. III. p. 135. Harington's Analysis, p. 240, n. 1. 2d. edit.

[4] Háj. Khalf. Tom. II. p. 90

[5] Háj. Khalf. Tom. IV. p. 354.

[6] Háj. Khalf. Tom. IV. p. 357. He erroneously calls the author Zain ad-Dín.

The Fatáwa-i Ibráhím Sháhí, by Shiháb ad-Dín Ahmad was composed by order of Ibráhím Sháh of Júnpúr, in the ninth century of the Hijrah. It is known in India, but it is not considered to be of much authority.[1]

The Tanwír al-Absár, by the Shaikh Shams ad-Dín Muhammad Ben Âbd Allah al-Ghazzí, who composed this work in A.H. 995 (A.D. 1586), is enriched with a variety of questions and decisions, and seems to come within the present class of law-books. It is considered to be one of the most useful books according to the Hanafí doctrines, and has been frequently commented upon.[2] The most noted of these commentaries are, the Manh al-Ghaffár, which is a work of considerable extent, by the author of the Tanwír al-Absár himself[3]; and the Fatáwa Durr al-Mukhtár, which was written in A.H. 1071 (A.D. 1660), by Muhammad Âlá ad-Dín Ben Shaikh Âlí al-Hiskafí. Both these commentaries contain a multitude of decisions, and are well known in India.

A Persian translation of the book on Taazírát, from the Durr al-Mukhtár, was made, by order of Mr. Harington, by Maulavi Muhammad Khalíl ad-Dín, and printed and published at Calcutta in the year 1813[4]; and a lithographed edition of the original Arabic text of the whole work appeared in the same city in the year 1827.[5]

A note book, or Háshíyat, entitled the Háshíyat al-Tahtáwí Âla Durr al-Mukhtár, was printed and published at Búlák, in the year 1839[6]; but I have not seen it, and am not aware

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[1] Harington's Analysis, p. 241. 2d. edit.

[2] Háj. Khalf. Tom. II. p. 453.

[3] See the Preface to the Persian translation of the book on Taazírát, from the Durr al-Mukhtár.

[4] نسخه ترجمهٔ تعزيرات كتاب درّ المختار از مولوي محمّد خليل الدّين 8vo. Calc. A.H. 1228 (A.D. 1813).

[5] فتا درّ المختار في شرح تنوير الابصار من مولّفات قدوة الفضلاء الاعلام زبدة الفقهاء العظام مولانا محمّد علاء الدّين الحسكفي بن الشّيخ علي الامام بجامع بني اميّه 8vo. Calc. A.H. 1243 (A.D. 1827).

[6] حاشيّة الطّحطاوي علي درّ المختار Búlák, A.H. 1254 (A.D. 1839).

whether it be explanatory of the work of Al-Hiskafí or of some other treatise bearing a similar title.

Of the collections of decisions now known in India, none is so constantly referred to, or so highly esteemed, as the Fatáwa al-Âálamgírí; and although, as has been stated, the Fatáwa Kází Khán is reckoned to have an equal authority with the Hidáyah, it is neither so generally used nor so publicly diffused as the Fatáwa al-Âálamgírí. The latter work, from its comprehensive nature, is applicable in almost every case that arises involving points of Hanafí law, and is on that account produced and quoted as an authority, almost every day, in the Courts in India. The Fatáwa al-Âálamgírí was commenced in the year of the Hijrah 1067 (A.D. 1656)[1], by order of the Emperor Aurangzéb Âálamgír, by whose name the collection is now designated. It contains a bare recital of law cases, without any arguments or proofs; an omission which renders it defective for elementary instruction. The immense number of cases, however, compensate in some measure for this want, which is, moreover, supplied by the Hidáyah, and other works; and the insertion of argument can the more readily be dispensed with, since the opinions of the modern compilers could not have been esteemed of equal authority with those of the older writers on jurisprudence; and the mere decisions, without comment or explanation, are equally applicable to particular cases, when illustrated and explained by reference to works of authority as text books. The Fatáwa al-Âálamgírí was translated into Persian by order of Âálamgír's daughter, Zéb an-Nisá.

The original Arabic text of the Fatáwa al-Âálamgírí was printed and published at Calcutta in the year 1828, in six large quarto volumes.[2]

A translation into Persian of the books on Jináyát and

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[1] Harington's Analysis, Vol. I. p. 241. 2d edit.

[2] الفتاوي العالمكيريّة في الفروع الحنفيّة Futawa Alemgiri; a collection of Opinions and Precepts of Mohammedan Law. Compiled by Sheikh Nizam, and other learned men, by command of the Emperor Aurungzeb Alemgir. 6 Vols. 4to. Calcutta, 1828.

Hudúd, from the Fatáwa al-Âálamgírí, was made, by order of the Council of the College of Fort William at Calcutta, by the Kází al-Kuzát Muhammad Najm ad-Dín Khán, and was published in the year 1813, together with a Persian treatise on Taazírát, by the same author, in the same volume with the translation of the book on Taazírát from the Fatáwa Durr al-Mukhtár already mentioned.[1]

Mr. Neil Baillie, has recently published a translation of selected portions from two books of the Fatáwa al-Âálamgírí that comprise the whole subject of sale.[2] "The rule adopted in making the selections," says Mr. Baillie, "was to retain every thing of the nature of a general proposition, but to reject particular cases, except when they were considered to involve or illustrate some principle or maxim of law."[3] The translator has executed his task in a most able manner, and, by preserving the division and arrangement of the original into chapters and sections, has rendered reference to the Arabic text a matter of no difficulty to the Oriental scholar. He has added throughout explanatory notes, which might, perhaps, have been extended with profit to the student. This work is a most important addition to the translated treatises on Muhammadan Law; and, being printed at the public expense, affords an additional instance of the reiterated and judicious liberality of the Honourable Court of Directors in patronising works tending to benefit India.

The Fatáwa al-Ankirawí, a collection of the decisions of Al-Ankirawí, by the Shaikh al-Islám Muhammad Ben al-Husain, who died in A.H. 1098 (A.D. 1686), is according to the doctrine of Abú Hanífah, and is a work of great authority.[4]

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[1] نسخهء ترجمهء كتاب الجنايات فتاوي عالمكيري از جناب قاضي القضاة محمّد نجم الدّين خان مع كتاب الحدود فتاواي مذكور و رسالهٔ تعزيرات مؤلّفه جناب ممدوح 8vo. Calc. A.H. 1228 (A.D. 1813).

[2] The Moohummudan Law of Sale, according to the Huneefeea Code, from the Futawa Alumgeeree. Selected and translated from the Arabic, by Neil Baillie. 8vo. Lond. 1850.

[3] Baillie's Moohummudan Law of Sale, Preliminary Remarks, p. xvi.

[4] Háj. Khalf. Tom. IV. p. 354.

The Fatáwa Hammádíyah was composed by Abú al-Fath Rukn ad-Dín Ben Husám an-Nágúrí, and dedicated to his tutor, Hamád ad-Dín Ahmad, chief Kází of Nahr Waláh. This work is a modern compilation, though its date has not been precisely ascertained, and is of considerable authority.

The Fatáwa Hammádíyah was lithographed, and published in the original Arabic at Calcutta in 1825.[1]

The Fatáwa as-Sirájíyah is a collection of decisions on rare cases, which do not often occur in other books. Mr. Baillie, in his treatise on Inheritance, has constantly referred to this work as an authority. An edition of the original text was published at Calcutta in 1827.[2]

Típú Sultán ordered a collection of Fatwas to be compiled in Persian by a Society of the Ûlamá of Mysore. It comprises three hundred and thirteen chapters, and is entitled the Fatáwa-i Muhammadí.[3]

The following works of the present class, published at Constantinople, and containing decisions according to the doctrine of Abú Hanífah, may be noticed.

A collection of Fatwas, in the Turkish and Arabic languages, entitled the Kitáb fí al-Fikh al-Kadúsí, composed by Háfiz Muhammad Ben Ahmad al-Kadúsí, in A.H. 1226 (A.D. 1808).[4] It was published in 1821.[5]

The Fatáwa-i Âbd ar-Rahím Effendí is a collection of judgments pronounced at various times in Turkey, and collected by the Muftí Âbd ar-Rahím. It was printed in the year 1827.[6]

Dabagzádeh Nuamán Effendí is the author of a collection

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[1] نسخهء فتاوي حمّاديّه در علم فقه من مؤلّفات مولانا ابو الفتح ركن الدّين بن حسام النّاكوري 2 Vols. 8vo. A.H. 1241 (A.D. 1825).

[2] كتاب الفتاوي السّراجيّة 8vo. Calc. A.H. 1243 (A.D. 1827).

[3] Stewart's Catalogue of the Library of Tippoo Sultan, p. 157, No. XCII.

[4] A description of this work by M. Bianchi will be found in the fourth volume of the Journal Asiatique, p. 171 *et seq.*

[5] كتاب في الفقه الكدوسي 4to. Const. A.H. 1237 (A.D. 1821).

[6] فتاوي عبد الرّحيم افندي 2 Vol. folio. Const. A.H. 1243 (A.D. 1827).

of six hundred and seventy decisions, which is entitled the Tuhfat as-Sukúk, and was published in the year 1832.[1]

The Jámia al-Ijáratín is a collection of decisions relating to the law of farming and the tenure of land, by Muhammad Aárif. It was printed in the year 1836.[2]

A collection of Fatwas relating to leases was published at Constantinople, by M. D'Adelbourg, in the year 1838.[3] Prefixed to this collection are the principles of the law of lease, according to the Multaka; and it is followed by an analytical table, facilitating reference to the various decisions.

There are several collections of decisions according to the doctrine of Ash-Sháfiî. The one most esteemed seems to be the Fatáwa Ibn as-Saláh, by Abú Âmrú Ûsmán Ben Âbd ar-Rahman ash-Sháhrazúrí, commonly called Ibn as-Saláh, who died in A.H. 642 (A.D. 1244).[4] Ibn Firkáh, who has been already spoken of as the author of the Fáráïz al-Fazárí, a treatise on Inheritance, also made a collection of decisions, according to the same doctrine, which is called, after his name, the Fatáwa Ibn Firkáh.[5]

A few other collections of Fatáwa are mentioned by Harington as being known in India, but I have not met with them, nor have I been able to gain any information as to their nature, beyond what he has stated. Of three of these he merely gives the titles; viz. the Fatáwa-i Buzázíyah, the Fatáwa-i Nakhshbandíyah, and the Mukhtár al-Fatáwa.[6] A fourth, the Fatáwa-i Karákhání, he describes as a Persian compilation, the cases included in which were collected by Mullá Sadr ad-Dín Ben Yaakúb, and arranged some years after his death by Kará Khán, in the reign of Sultán Âlá ad-Dín.[7]

Books of the fifth class according to the Shíâh doctrines

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[1] تحفة الصّكوك 4to. Const. A.H. 1248 (A.D. 1832).

[2] جامع الاجارتين 8vo. Const. A.H. 1252 (A.D. 1836).

[3] Recueil de Fetvas, ou decisions de la Loi Musulmane, concernant le contrat de louage. Par E. D'Adelbourg. 4to. Const. 1838.

[4] Háj. Khalf. Tom. IV. p. 350. [5] Háj. Khalf. Tom. IV. p. 351.

[6] Harington's Analysis, Vol. I. p. 236. 2d. edit.

[7] Harington's Analysis, Vol. I. p. 240 note 1. 2d. edit.

are very rare; and although many writers are distinguished by the description of having been great masters of the Îlm al-Fatáwa, or as Givers of decisions, I have only discovered two works that come expressly within this class. The first is the Mujarrad fí al-Fikh wa al-Fatáwa, by the Shaikh Abú Jaafar Muhammad at-Túsí, already so often mentioned; and the second is the Lamâh-i Dimishkíyah, by the Shaikh Ash-Shahíd Abú Âbd Allah Muhammad Ben Makkí ash-Shámí, who was killed in A.H. 786 (A.D. 1384).

The origin of the latter work is stated to have been, that Sultán Âlí Muayyid, who was the Ruler of Khurásán and a Shíâh, sent to Syria, to request the Shaikh Abú Âbd Allah to leave that country and proceed to Khurásán; whereupon the Shaikh excused himself, and having collected his decisions into the volume above-mentioned, sent the book to the Prince, instead of going himself.

There is a Commentary on the Lamáh-i Dimishkíyah, by Zain al-Aábidín, entitled the Rauzat al-Bahíyat[1], which is probably the same work as that referred to by Âlí Hazín, in his Memoirs, by the name of Sharh-i Lamâh-i Dimishkíyah.[2]

I may add, that Mr. Bland mentions a collection of decisions in his notice of the Oriental MSS. in the Library of Eton College[3], which, from its title, Aurád-i Imámíyah, is most probably a Shíàh work.

The preceding selection will, I believe, be found to comprise the greater part, if not the whole, of the Muhammadan law-books which are of any authority in India, together with a list of their printed editions and translations. A short account of the original treatises by European authors, which are, unfortunately, very few in number, will close this enumeration of the writers on Muhammadan jurisprudence.

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[1] Stewart's Catalogue of the Library of Tippoo Sultan, p. 151, No. XLIX.

[2] The Life of Sheikh Mohammed Alí Hazín. Persian text edited by Belfour, pp. ١٠ and ٥٢ 8vo. London, printed for the Oriental Translation Fund in 1831.

[3] Journal of the Royal Asiatic Society, Vol. VIII. p. 105.

Sir William Hay Macnaghten's Principles and Precedents of Muhammadan law[1], like every work of their accomplished author, are of the highest authority, and exhibit the accuracy and clearness of arrangement for which he was so eminently distinguished. The Precedents are of the greatest importance, and the original extracts from the Hidáyah, the Sharáïa al-Islám, the Sirájíyah, and the Sharífíyah, which he has subjoined as an Appendix, materially increase the value of his work.

Mr. Neil Baillie's excellent treatise on the Law of Inheritance[2] is, as he himself modestly remarks, little more than a condensation of the Sirájíyah and Sharífíyah; but it is a condensation executed with much ability and judgment, and renders a very intricate subject perfectly intelligible. The passages in the original Arabic from the two works above mentioned as forming the basis of his treatise, together with others which he has added, will be consulted with advantage and gratification by the Arabic scholar.

A good abstract of Muhammadan law will be found in the Journal of the Royal Asiatic Society[3]: it is from the pen of Lieut. Colonel Vans Kennedy, and is well worthy the attention of the student.

Harington, in his Analysis of the Bengal Regulations, already so often quoted, has devoted a long chapter to the Criminal Law of the Musulmáns, as modified by the Regulations, which may be said, so far as it extends, almost to supersede reference to any other work on the subject.[4] This chapter on Criminal Law is introduced by a description of some of the law-books of the Muhammadans, being a reprint of the paper on the same topic inserted by Harington in the tenth volume of the Asiatic Researches.

Mr. Richard Clarke, in his abstract of the Bengal Regula-

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[1] Principles and Precedents of Moohummudan Law, being a compilation of primary rules relative to the doctrine of Inheritance, Contracts, and Miscellaneous subjects; by W. H. Macnaghten, Esq. 8vo. Calcutta, 1825.

[2] The Moohummudan Law of Inheritance according to Aboo Huneefa and his followers; by Neil B. Baillie. 8vo. Calcutta, 1832.

[3] Journal of the Royal Asiatic Society, Vol. II. p. 81.

[4] Harington's Analysis, Vol. I. p. 223 *et seq.* 2d edit.

tions, forming the Sixth Appendix to the Minutes of Evidence taken before the Judicial Sub-Committee of the House of Commons in 1832[1], has also given a clear and concise exposition of the Muhammadan Criminal Law.

The principles of this law, as it is now in force in Bengal, are laid down by Mr. Beaufort, in his Digest of the Criminal Law of the Presidency of Fort William; and the work on the Criminal Law of Madras, which was published by Mr. Baynes, Civil and Sessions Judge of Madura, in the year 1848, leaves nothing to be desired on the subject with regard to that Presidency.[2]

The proprietary right in the soil, about which so much has been written, seems hardly to come within the compass of the present account of the Muhammadan law. I cannot, however, forbear to mention the learned works of the late General Sir Archibald Galloway and General John Briggs, who have especially distinguished themselves by their researches on this difficult question.[3]

Of the works by Europeans that have appeared on the Continent treating of Muhammadan law, the Tableau de l'Empire Othoman, by Mouradjea D'Ohsson, is entitled to the first place. As I have already stated, it is founded almost entirely upon the Multaka of the Shaikh Ibráhím al-Halabí, and embodies a translation of the greater portion of that treatise. The introduction to the Civil Code is both interesting and valuable; but the Code itself is wanting in arrangement, and sometimes, unfortunately, even in accuracy. Mouradjea D'Ohsson did not live to complete his work, but it was finished by his son. If we consider the paucity of materials, and the backward state of Oriental learning in Europe at the time when it was composed, it must be allowed to reflect the highest credit upon its authors. It will always be referred to with profit by those who may turn their attention to Indian

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[1] IV. Judicial, p. 665. 4to. edit.

[2] The Criminal Law of the Madras Presidency as contained in the existing Regulations and Acts. 8vo. Madras, 1848.

[3] Observations on the Law and Constitution and present Government of India, by Lieut. Col. Galloway, Chapter II. p. 32 *et seq.* 8vo. Lond. 1832. 2d. edit. The present Land-tax in India, by Lieut. Col. John Briggs. Chapter III. p. 108 *et seq.* 8vo. Lond. 1830.

Muhammadan law, as exhibiting a practical exposition of the doctrine of Abú Hanífah and the two disciples, which obtains throughout the Turkish Empire.

In the year 1841 M. Eugène Sicé of Pondicherry published a treatise on the Muhammadan law as current in the Dakhin.[1] The author states that he compiled it from the Kanz, by Nasr Allah Ben Ahmad[2]; the Khulásat al-Ahkám, by Ahmad Abú al-Kásim Ben Ahmad al-Táyaatí; and the Faráïz-i Irtizíyah.[3] M. Sicé states that the Muhammadans of Pondicherry are *Shíâhs*; but it is quite clear that no *real* Shíâh would allow many of the doctrines laid down in his treatise, based as they are on the authority of the Sunní Imáms. He, however, mentions that they pay respect to the memory of Hasan and Husain; and he also quotes as an authority, in several places, a certain Imám Jaafar, who is very likely no other than Jaafar as-Sádik himself. It is probable that these so-called Shíâhs of Pondicherry may be a kind of hybrid sect (not *true* Shíâhs), who venerate Âlí and his descendants, and at the same time, through ignorance, pay respect to the opinions of the great jurisconsults of the Sunnís, and even grant them the title of Imám.

A series of important papers on the Civil Code of the Sunnís is now in course of publication in the Journal Asiatique, by M. Du Caurroy[4]: the first appeared in July 1848.

M. M. Solvet and Bresnier published at Algiers, in the year 1846[5], a short treatise on the law of Inheritance according to the Máliki doctrine: it is an interesting little work, and the

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[1] Traité des Lois Mahométanes, ou Recueil des Lois, us et coutumes des Musulmans du Décan, par M. Eugène Sicé, de Pondichéry. Journal Asiatique, 3me Série. Tome XII. p. 149.

[2] The Kanz, of which M. Sicé promises an edition and translation, is probably the Kanz ad-Dakáïk of Abú al-Barakút Âbd Allah Ben Ahmad an-Nasafí, which I have already spoken of in the third class of law-books according to the Sunní doctrines, *supra*, p. cclxx.

[3] This work has been already noticed *supra*, p. cclxxxiii.

[4] Legislation Musulmane Sunnite, rite Hanèfi, par A. Du Caurroy. Journal Asiatique, 4me Série. Tome XII. p. 5.

[5] Notice sur les successions Musulmanes par Solvet et Bresnier. Alger. 1846, in 8vo.

tabular statement of the shares taken by the concurrent heirs of a deceased, which it was written to illustrate, will be found of considerable practical utility.

A valuable and recondite contribution by Dr. Worms to the literary illustration of the proprietary right in the soil according to the Muhammadan law has appeared in the Journal Asiatique[1]: it is full of curious and varied information on the subject, taken from different authors; and as the extracts are in almost every case accompanied by the original texts, a reference to a multitude of volumes, and to MSS. difficult of access, is spared to those Orientalists who may wish to investigate this most important and interesting topic.

The latest publication on the Continent relating to the Muhammadan law is also inserted in the Journal Asiatique; in a recent Number of which excellent periodical Mírzá Kásim Bég, Professor at the Imperial University of Saint Petersburg, has given an admirable account of the rise and progress of the jurisprudence of the Sunnís, displaying an intimate acquaintance with the subject, and great ability in its treatment.[2]

No original European work has been written on the Shíâh law, which is only slightly touched upon by Sir William Macnaghten in his Principles and Precedents of Muhammadan law. An announcement was, however, made in the Annual Report of the Asiatic Society of Paris for the year 1848[3], that M. Kasimirski de Bieberstein, the librarian of the Society, was occupied in the preparation of a Shíâh Code of Law. M. Kasimirski has himself visited Persia, and his personal experience will thus enable him to supply practical information on the subject, which could not be furnished by those who have not enjoyed the same opportunities.

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[1] Recherches sur la constitution de la propriété territoire dans les pays Musulmans, et subsidiarement en Algérie, par M. le Docteur Worms. Journal Asiatique, 3me Série. Tome XIV. p. 225.

[2] Notice sur la marche et les progrès de la Jurisprudence parmi les sectes orthodoxes Musulmanes; par Mirza Kazem Beg. Journal Asiatique. 4me Série, Tome XV. p. 158 *et seq.*

[3] Journal Asiatique, 4me Série, Tome XII. p. 120.

(3.) Laws of the Portuguese, Armenians, Pársís, &c.

It is not an easy task to obtain accurate information with respect to many of the laws which come under this class. All of them depend, more or less, and in some instances entirely, upon arbitrary usage and customs, to which time has given the force of law.

The natives of India not comprised in the Hindú and Muhammadan classes, even when possessing a Code of laws of their own, rarely respect its provisions, and are generally ignorant of its application; and it is only by a diligent inquiry into the local customs upon which they rely that justice can be administered to them in our Courts according to their so-called systems of jurisprudence. Such being the case, the subject may be dismissed in a very few words, taking the different classes of natives *seriatim*.

The law of the Portuguese in India is the Roman Civil Law as current in Portugal[1], but somewhat modified by local custom.

The Armenians of Bengal, in their petition, which I have quoted in a former page[2], state that "no trace of their own law is now to be discovered;" and it appears to be an undoubted fact, that no peculiar Code of laws has been administered amongst them anywhere since they have ceased to be a nation.[3]

No Code whatever is alluded to in Father Chamich's History of Armenia; nor is the name or title of any author or work on law given by the learned Sukias Somal in his account of the literature of Armenia.[4]

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[1] See Arth. Duck, De Usu et Authoritate Juris Civilis Romanorum per dominia principum Christianorum. Lib. II. cap. 7.

[2] *Supra*, p. clxxxvii.

[3] Leon the Sixth, the last of the Armenian monarchs of the Cilicio-Armenian kingdom, which perhaps was never entirely independent, was taken prisoner by the Mamlúks of Egypt in A.D. 1375. He was released in 1382, but was not permitted to return to his own country, and wandered through Europe from place to place until his death, which happened at Paris in the year 1393. Vahram's Chronicle, translated by Neumann. Preface, p. xii. 8vo. Lond. 1831. Printed for the Oriental Translation Fund.

[4] Quadro della Storia Letteraria di Armenia. 8vo. Venezia, 1820.

Mr. Avdall, an Armenian gentleman well versed in the literature of his country, states, in a communication addressed to the Secretary of the Indian-Law Commission[1], that "two Codes of Armenian law have at different times been compiled. The first is said to have been compiled under the auspices of the Armenian King, Johannes Bagratian, about the year 1046, and is known only through the medium of a translation made into Latin, in the year 1548, by order of Sigismund the First, King of Poland, into whose territories a body of Armenians had emigrated in the eleventh century. The second is the compilation of Mechithar Ghosh, a learned Armenian, who flourished in the end of the twelfth and beginning of the thirteenth centuries. According to this writer there was, in his own times, a total absence of laws and law-books among the Armenians. A copy of this book exists at Venice; but neither of this, nor of the preceding Code, does any copy exist in India."

A short time since I was favoured with a communication on the subject of the Armenian laws by the Archbishop and Abbot-general of the Mechitaristan Monastery of San Lazzaro in Venice. The learned prelate distinctly states that the Code of ancient Armenian laws no longer exists. He says, also, that the Armenians who were established at Leopolis in Poland in the eleventh century, carried with them the Armenian laws, which were there administered to them. He then mentions the Latin translation made by order of King Sigismund, and the later compilation spoken of by Mr. Avdall; adding that there is a MS. of the former, and several of the latter work, in the library of the Monastery. He also refers to another Armenian work, which is a translation from the Greek, and is entitled "the Laws of Kings;" and he concludes, by stating emphatically, that the Armenians who remained in their own country lost not only their independence, but also their national laws; and that all those who emigrated have always been governed by the laws of the countries in which they have settled. The Archbishop, however, makes the gene-

[1] Special Reports of the Indian-Law Commissioners, 1842, p. 457 note.

ral reservation, that in ecclesiastical matters all Armenians are subject to the laws of the Armenian Church, as established by their ancient holy Fathers.

There is no doubt, therefore, that the Armenians at the present time have no actual laws especially applicable to them; and that decisions in cases to which they are parties can only be regulated in accordance with local usage.

The Pársís, who are now settled principally in Gujarát, and on the north coast of Bombay, are a large and influential class of natives, and are supposed to have first established themselves in India about the year 651, when the Sásánian monarchy was extinguished in Persia by the defeat and murder of Yazdajird, the last king of that race, and the fireworship of Zartusht was supplanted by Islám.

On the establishment of the new creed, a large body of Persians emigrated from Kirmán to India, in order to practise peacefully the faith of their forefathers, and they are represented to have carried with them the ancient books of their religion and law. Such books, however, as are now extant relate almost exclusively to the doctrines and ceremonial observances of their religion; and there are no existing works which can be considered as forming a Code of laws properly so called.[1]

Their present law, if it deserve the name, consists of their national customs, preserved by immemorial usage, and many others borrowed from the Hindús, which are ascertainable only by reference to the Dustúrs, or Pársí priests, or to the Múbid, or head, or a Pancháyit, of the Cast, for as such they

[1] Zend-Avesta, Ouvrage de Zoroastre, traduit en Français sur l'original Zend par Anquetil du Perron. 3 Tomes 4to. Paris, 1771.—M. Westergaard of Copenhagen, who has been long occupied in researches on the ancient languages of Persia, is preparing for publication a complete edition of so much of the Zendavesta as has been handed down to us. Some years since he undertook the voyage to Bombay for the purpose of collecting materials; and since then he has been diligently employed in the examination of the literary treasures of all the public libraries of Europe. M. Westergaard's work will be accompanied by a translation, a grammar of the two dialects of the Zend, and a complete concordance of the Zendavesta.

are considered in India, and they have adopted the Hindú method of referring disputed points to a Pancháyit.

The Act of the Legislative Council of India No. IX. of 1837, may be mentioned here as fixing the law with regard to Pársís in certain cases. By this Act it was declared, that all immoveable property belonging to any Pársís, and situate within the jurisdiction of the Supreme Courts, should, as far as regards its transmission in cases of death or intestacy, be of the nature of chattels real, and not freehold.

The Sikhs do not appear to have any distinct system of jurisprudence: indeed, the religion itself of the followers of Nának can hardly be called an established belief. Its original elements were deism of a mystical tendency, contemplative worship, peace and goodwill, and amalgamation of Muhammadan and Hindú.[1] These principles have, however, become sadly degenerated in practice. The great distinction between the Sikhs and the other Hindús is the abolition of Cast; but the experiment has proved a most unsuccessful one, as it has caused, to use the words of Professor Wilson, "the extinction of many of the restraints which, in the more orthodox system, supply, however imperfectly, the want of a purer code of faith and practice."[2] The sacred books of the Sikhs contain no systematic exposition of doctrine, and but few practical rules of conduct; being for the most part of a mystical or moral purport.[3] Their laws, if they may be so termed, are adaptations of the Hindú system, and depend entirely upon usage, and not upon any written Code.

I am not aware that the Jain laws have ever been treated of by any European author, or that their legal writings have ever been consulted or examined. In some rare instances,

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[1] A Summary Account of the Civil and Religious Institutions of the Sikhs. By Professor H. H. Wilson. Journal of the Royal Asiatic Society. Vol. IX. p. 43.

[2] Ib. p. 58.

[3] Ib. p. 45. And see, for an account of the sacred books of the Sikhs, and some translated extracts therefrom, A History of the Sikhs, by J. D. Cunningham. Append. I. II. III. and IV. p. 345 *et seq.* 8vo. Lond. 1849.

however, when cases have arisen involving questions of Jain law, the Hindú law officers of the Courts have given their opinions, professedly founded on a reference to the Jain Shastras. What these Shastras are I have not been able to ascertain.

An abstract translation of the Burmese Code of laws, entitled Damasat, or the Golden Rule, appeared in the year 1833.[1] The Damasat seems to be of considerable antiquity, and presents many analogies with the Hindú law; the abstract, however, is only sufficient to give a general view of the system.

Dr. Rost is now engaged in preparing an edition of a Code of Buddhist laws in the Pálí language, under the auspices and at the expense of the Earl of Ellesmere, the President of the Royal Asiatic Society. The existence of this Code was not known to Europeans until it was discovered by Dr. Rost among the MSS. preserved in the British Museum. It is said to have been promulgated in the fifth century of our Æra; but it is a question how far it is Buddhistical in its origin; and the name of its reputed author, Manusara, would of itself lead us to infer that it is founded on the Institutes of Menu, even if the fact were not abundantly proved by an inspection of its form and contents. This Pálí Code is accompanied by a translation and commentary in the Burmese language, adapting its provisions to the wants of more recent times, and appears to be the text book of the Burmese Courts of Law, as well as those of the other Buddhist nations who inhabit the extra-Gangic peninsula.

The laws of China, also a Buddhist country, have been made known by the learned labours of Sir George Staunton, who, in his translation of the Ta Tsing Leu Lee[2], has presented us with the fundamental laws of the Chinese, and a selection from their Penal Code. The Leu Lee is held in the highest venera-

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[1] A description of the Burmese Empire, by Father Sangermano, p. 182. 4to. Rome, printed for the Oriental Translation Fund, in 1833. And see Symes' Embassy to Ava, p. 303 *et seq.* 4to. Lond. 1800.

[2] Ta Tsing Leu Lee; being the Fundamental Laws, and a Selection from the Supplementary Statutes of the Penal Code of China; translated from the original Chinese, by Sir G. T. Staunton, Bart. 4to. Lond. 1810.

tion in the Celestial Empire, and comprises a general Code of laws, Civil, Fiscal, Ritual, Military, and Criminal, together with such as are relative to public works.

The Javan law is divided into two departments, that depending upon the Muhammadan law, and that which rests upon custom and tradition: the former called Hukm Allah, and the latter Yúdha Nagára. The Muhammadan law decisions are guided by the Arabic works on law, or rather by a collection of opinions extracted from them, and translated into the Javan language. The law of custom is chiefly handed down in oral tradition, but is also contained, in a great measure, in two works, one by Júgul Múdah Páteh, which is computed to be about six hundred years old, and another by Rája Kápa. The first compilation of the Javan laws, in which they were somewhat blended with the Muhammadan jurisprudence, was made by order of the first Musulmán prince of Demák. Another work of this description which is in high estimation is the Súria Alam: it will be found translated into English in Sir Stamford Raffles' History of Java.[1] In the latter work there is also an abstract of some of the laws said to have been in force in the earliest periods to which Javan tradition refers.[2] The proclamations, and the laws and regulations of the Sovereign, form another source of deviation from the Muhammadan law. Collections of these have been committed to writing.[3]

It is not probable that the Hebrew laws, grafted by the Rabbinical writers on the Code contained in the Old Testament, will ever be received or administered in India: those, however, who are curious in the matter, will find ample information as to the Jewish laws of succession and marriage, in the works of the learned Selden.[4]

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[1] Raffles' History of Java, Vol. II. Appendix, C. p. xxxviii. 8vo. Lond. 1830. 2d. edit.

[2] Ib. Appendix, C. p. li.

[3] Ib. Vol. I. pp. 312, 313.

[4] J. Seldeni Uxor Ebraica, seu deNuptiis et Divortiis ex Jure Civili veterum Ebræorum, Libri Tres, Ejusdem De Successionibus ad Leges Ebræorum in Bona defunctorum. Edit. nov. 4to. Francof. 1695.

In addition to the above, several races, as the Khonds and some others, might be ranged under the present head; but these have no pretension to laws of their own.

It is evident, from this rapid sketch, that the class of natives of India who are neither Hindús nor Muhammadans rely in most instances almost entirely upon custom; that they are either destitute of particular laws; that such laws are unknown or forgotten, or laid aside; or, lastly, that they have adopted modifications of the Hindú and Musulmán systems of jurisprudence.

Such is the present state of things; and the uncertainty caused by it, which has called forth the express complaint of the more influential portion of this class of natives, seems to require the prompt and active interference of the legislature.

VI. ACCOUNT OF THE REPORTS OF DECIDED CASES, AND CONCLUSION.

Before concluding this Introduction, I shall give a short account of the Reports from which the cases contained in the Digest have been collected.

The decisions of the Judicial Committee of the Privy Council are taken from the Reports of Knapp and Moore, from the Indian Appeal Cases collected and published separately by the latter gentleman, and from a valuable collection of the printed cases in Indian Appeals, with the judgments annexed, prepared and arranged by Mr. Lawford. I have added a few from MS. notes taken by myself in the Council Chamber.

The cases decided in the Supreme Court at Calcutta are derived from the following sources:—

Notes of decided cases by the late Sir Edward Hyde East, Baronet, formerly Chief Justice of the Court. These notes are printed *in extenso* in the second volume of this work. They were originally placed at my disposal in MS., by the late learned Judge; and they are now published for the first time, by the kind permission of the present Baronet, Sir James East, M.P.,

These notes will be found to contain many most important decisions on points of native law, and questions relating to the jurisdiction of the Court.

Reports of cases inserted by way of illustration, by Sir Francis Macnaghten, formerly a Judge of the Court, in his Considerations on the Hindú Law as current in Bengal, published in the year 1824. These Reports, from the nature of the work from which they are extracted, are of course confined to cases involving questions of Hindú law.

The notes of cases contained in Mr. Longueville Clarke's editions of the Rules and Orders of the Supreme Court, published in 1829; of the additional Rules and Orders which appeared in the same year; and of the Rules and Orders for 1831—32, published in 1834. These notes of cases are very valuable, many of those in the two latter collections containing the judgments in full, and relating to points of native law of the greatest interest.

The Reports by Mr. Bignell, published in 1831. A single number only of these Reports appeared. The cases are fully and ably reported.

The notes of cases inserted in Mr. Smoult's Collection of Orders on the Plea Side of the Supreme Court at Calcutta, from 1774 to 1813 inclusive, published in 1834. These notes are succinct, but highly useful, and comprise decisions, principally on points of practice, from the year 1774 to 1798.

A Note-book by the late Mr. E. D. Barwell, formerly a barrister of the Court, containing MS. notes of decisions in the Supreme Court at Calcutta. Some of these notes are extracted from the MSS. of Mr. L. Clarke, and that gentleman has kindly authorised me to make use of them.

A Collection of decisions of the Supreme Court at Calcutta, published by Mr. Morton in 1841. This Collection is principally compiled from the MS. notes of Sir R. Chambers, C.J., Mr. Justice Hyde[1], and other Judges of the Court; and the

[1] These MS. notes of Sir R. Chambers and Mr. Justice Hyde, which were also liberally made use of in Mr. Smoult's collection, comprise decisions of the Supreme Court at Calcutta from the year 1774 to 1798. The

cases relate almost exclusively to questions altogether peculiar to India. It is needless to add that it is a work of the greatest utility and authority.

The Reports by Mr. Fulton, of which the first volume was published in the year 1845. This volume comprises cases decided between the years 1842 and 1844. Mr. Fulton has since returned to England, and I am not aware that any Reports have been undertaken in continuation of his work.

The only collection of the decisions of the Supreme Court at Madras is that published by Sir Thomas Strange, C.J. This work appeared in the year 1816, and comprises three volumes. The cases are clearly set forth, and the judgments frequently given entire; but, from the paucity of the materials placed at the disposition of the learned Judges at that period, the decisions of the Court, where they relate to questions of native law, must be taken with some reservation.

For the decisions of the Supreme Court at Bombay I am indebted to the kindness of Sir Erskine Perry, who now presides in that Court. These decisions have not been before published, and will be found printed *verbatim* in the second volume of this work. They gain additional authority from the fact of the MS. having been carefully revised and corrected by the learned Chief Justice himself.

The first printed Reports of cases decided in the Courts of the Honourable East-India Company were published by Sir William Hay Macnaghten, when Register of the Sudder Dewanny Adawlut at Calcutta, in which Court the cases were determined. A second edition of the first two volumes appeared in the year 1827, and the Reports were subsequently continued in their present form. Those contained in the first volume were chiefly prepared by Mr. Dorin, afterwards a Judge of the Court. The notes appended to the cases in this first volume are entitled to weight, as having been written or approved by the Judges by whom the cases were decided; and those explanatory of intricate

volumes in which they are contained were presented by Lady Chambers, the widow of Sir Robert, to the Supreme Court at Calcutta.—See Smoult and Ryan's Rules and Orders, Vol. I., Pref. p. xxvii.

points of Hindú law are most especially valuable, as coming from the pen of the learned Henry Colebrooke. The second, third, and part of the fourth volumes, were also published by Sir William Macnaghten: the later cases in the fourth volume, were selected and prepared by Mr. C. Udney, his successor in the office of Register. The cases contained in volume the fifth were reported by Mr. J. Sutherland: those given in the sixth and seventh volumes have no reporter's name affixed, but they were approved by the Court, and were, as I believe, prepared by the Registers. These Reports are still in progress.

Reports of summary cases determined in the Sudder Dewanny Adawlut at Calcutta from the years 1841 to 1846 were appended to the seventh volume of the above-mentioned collection. In the year 1845 a selection of Reports of summary cases was published separately, containing selected decisions from the year 1834 to 1841, the former year being the period at which the summary and miscellaneous department of the business of the Court was first entrusted to one Judge.

Reports of cases, chiefly in summary appeals decided in the Sudder Dewanny Adawlut at Calcutta, were published by Mr. Sevestre, one of the Pleaders of the Court. Volume the first of this collection comprises three parts, and was completed in the year 1842. I have received five parts of the second volume, which bring these valuable Reports down to September 1846, in which year the fifth part appeared. The cases are inserted in the Digest to that period.

The decisions of the Sudder Dewanny Adawlut at Calcutta, recorded in English, in conformity to Act XII. of 1843, are now published monthly. This collection was commenced in the year 1845, by order of the Right Honourable the Governor of Bengal.

Reports of the decisions of the Sudder Dewanny Adawlut of the North-Western Provinces, recorded in English, in pursuance of Act XII. of 1843, were commenced in April 1846, and are still in course of publication.

The decisions of the Zillah Courts of the Lower Provinces, recorded in English, according to Act XII. of 1843, are also printed monthly, in the same form as the two preceding collections.

The later cases in these three last-named series came into my hands too late for insertion in the Digest, but they will be collected and arranged in a continuation of this work, which I purpose to publish periodically, as the materials accumulate in sufficient quantity.[1]

The Reports of cases decided in the Courts of the Honourable Company at Madras are few in number. A volume was published in 1843, entitled, Decrees in Appeal Suits determined in the Court of Sudder Adawlut, Vol. I., containing select decrees from 1805 to 1826 inclusive. The cases in this collection which involve questions of Hindú law are interesting, as illustrative of the prevailing doctrines of the southern schools. They are, however, obscurely reported, and, in some instances, contain no point of law at all, being merely decisions for want of proof.

The cases decided in the Sudder Adawlut at Madras are now printed monthly: the first number appeared in July 1849. These arrived in this country too late for insertion in the Digest, but will be found in the Continuation.

The decisions in the Sudder Dewanny Adawlut at Bombay are taken from two collections of Reports.

The first is the well-known series of Reports by Mr. Borradaile, formerly one of the Judges of the Court, and the author of the translation of the Mayúkha. Mr. Borradaile's work is in two folio volumes, and was published at Bombay in the year 1825. It is replete with cases on points of law peculiar to the Bombay side of India, which are very ably reported.

The other source from which I have derived the decisions of the Sudder Dewanny Adawlut at Bombay is a small anonymous publication, which appeared in 1843. It is entitled, Reports of selected cases determined in the Sudder Dewanny Adawlut at Bombay. The Reports contained in this little volume were prepared, with few exceptions, by the Deputy Registers of the

[1] The decisions of the Civil Courts, recorded in English, according to Act XII. of 1843, comprise numerous cases not involving points of law. It will therefore be necessary only to make a selection from them of such decisions as offer matter of interest.

Court, and are arranged according to the dates of the decisions, which are scattered over a period of twenty years, from 1820 to 1840, the later ones having been noted by the Judges who sat, as proper subjects for publication.

In the branch of Criminal Judicature two series of Reports have alone been printed. The former of these comprises five volumes and part of a sixth, and contains sentences of the Nizamut Adawlut at Calcutta. The first two volumes were prepared by Sir William Macnaghten: the three last have no reporter's name. This series is still in progress.

The second series contains Reports of criminal cases determined in the Court of Sudder Foujdary Adawlut of Bombay from 1827 to 1846. This compilation is by Mr. Bellasis, Deputy Register of the Court; and the cases have been selected to illustrate the application of the law, both in questions of evidence and of punishment, and also to settle doubtful points of procedure and practice. The first volume was published in the year 1849, but its very recent appearance in this country has precluded me from making use of it in the Digest. The cases it contains will, however, be inserted in the Continuation.

It remains to make some remarks respecting the plan which I have adopted in the arrangement of the Digest.

It may be thought by some that it would have been better to have divided the work into two separate portions, one having reference to the decisions pronounced in Her Majesty's Courts, and the other to those in the Courts of the Honourable East-India Company. And, indeed, the diversity of the laws, and the variety of the Courts, cause a great difficulty in arranging the decided points together, so as to combine brevity with clearness. Many of the cases decided are, however, of authority in *all* the Courts; and thus, had I divided the Digest into two distinct parts, it would have necessitated an almost endless repetition; whilst, by always keeping the placita under each title separate, when the decisions are not of common authority, I trust that any inconvenience of reference will be avoided. The title "Mortgage" may be cited

as an instance. Under this title the placita are arranged under the following heads:—1. Hindú Law; 2. Muhammadan Law; 3. In the Supreme Courts; 4. In the Courts of the Honourable Company. The decisions under the two first heads are applicable to both species of Courts, Queen's and Company's; whilst those placed under the two latter have a special and restricted application. In certain instances I have not thought it necessary to class the decisions under separate heads as to the Courts in which they were passed. The placita found under the title "Hindú Widow," for example, may be quoted as authorities in all the Courts; whilst those under "Sheriff" are strictly confined to the Supreme Courts of Judicature; and those arranged under the title "Resumption" apply to suits which can only arise in the Courts of the Honourable East-India Company. By this means I think the various systems of law are kept entirely distinct, with a greater attainment of conciseness, lucidity of arrangement, and convenience of reference, than would have resulted from any other method: and I apprehend that no confusion can arise in the minds of those who are acquainted with the constitution and powers of the Courts of Judicature in India, or who have followed me thus far in this Introduction.

Where questions of native law occur, I have always referred copiously, in the notes at the foot of the page, to the text-books. This, I hope, will save some trouble to those who may not be well acquainted with such works, by directing their attention at once to the places where the law is to be found on which the decisions are based.

I am sensible that this plan of reference might have been more fully carried out; and I trust that, at a future period, I may have an opportunity of perfecting it. So far as it extends, however, I believe it will afford assistance to the student.

In cases involving disputed points of Hindú law the reader will perceive that I have, on their first occurrence, stated shortly in the notes the difference of doctrine which obtains in the various schools, and given references to works in which the points in consideration are more elaborately discussed.

It is hoped that these references, together with the name of the Court in which any case may have been decided,

which is obvious from the title of the work from which the decision is extracted, always appended to the foot of the placita, will be sufficient to indicate the school of law to which each decision has relation. For instance, in the case of *Sree Brij-bhookunjee* v. *Gokoolootsaojee* (Adoption 3), it appears, by the abbreviated name of the Report, viz. Borr., that the cause was decided in the Sudder Adawlut of Bombay; and reference being given in the Notes to the Mayúkha, the reader will at once be aware that the doctrine upheld by the decision is of authority in the Maharashtra school. When this is not so self-evident, and generally where the doctrine is peculiar to one particular school, I have prefaced the decision by stating the school of law by which it is governed.

Whenever the notes illustrating and explaining the various decisions are not from my own pen, I have added the names of their authors. Some few, however, affixed to the decisions taken from the latter volumes of the Reports in the Sudder Dewanny Adawlut of Calcutta, have been inserted without acknowledgment, the names of the annotators not appearing on the face of the Reports.

The decisions of the Judges in the Courts in India are of various authority; those of early date having been sometimes of necessity pronounced upon insufficient grounds, no means then existing for the acquirement of the native systems of law; and they are always of greater or less weight according to the Judges by whom they were given. In order to assist the discrimination of the reader on this point, I have added the names of the Judges by whom every judgment or sentence was passed in the Courts of the Honourable East-India Company; and I have invariably noticed in every case the date of each decision. It must also be observed, that many of the decided points are founded upon Laws and Regulations which have been since abrogated. This I have always pointed out in the notes.[1]

[1] It is necessary here to mention, that the first part of the Digest was published in November 1847. Alterations are constantly taking place in the law of India, as well as in the practice of the Courts; so that, in some instances, the more modern decisions entered in the Digest, even when not accompanied by the notes above alluded to, may no longer be applicable.

Where it has been found impracticable to arrange the cases under the several titles in a connected order of subject, I have placed them chronologically.

The reader will remark, that, both with regard to the placita and the notes, I have freely resorted to a system of double entry. As an excuse for this, I may observe, that, in a work like the present, omission is more to be guarded against than repetition; the principal object in view being, that every decided point, and the authorities upon which it is grounded, may be readily discovered.

The plan of numbering the placita has been adopted with some hesitation, the mere fact seeming to imply, that the numbers given under any reference to a particular title comprise *all* the cases relating to such title. I have no doubt, however, that many decided points may be discovered which should more strictly have been inserted under other titles than those where they occur, and that references have frequently been omitted. Accuracy in this respect can scarcely be expected in the first arrangement of so many thousands of cases. I have, nevertheless, carried out the plan of numbering, as, however imperfect, the placita referred to are more easily consulted when numbered, than if the references were made merely to a title *generally*, as is the case in Harrison's and other Digests. Many points of law may, by this means, be at once discovered; but it must not be concluded that the numbers mentioned refer to the *only* places in which such points are illustrated. I therefore beg to make the express reservation, that the plan of numbering the placita has been introduced solely for the purpose of affording assistance to the reader, and that it must not be entirely relied on, so as completely to supersede his own research.

I have naturally experienced great difficulty in classifying the cases which relate to the practice of the Sudder and Mofussil Courts. Correctness, in regard to so technical a subject, is, I fear, hardly to be attained by one who has never practised in the Courts in India.

The method, if it deserve the name, which I have followed in the transcription of native words, may call for a few words of explanation. Nowhere does a greater incongruity exist with

respect to the rendering of Oriental terms by means of the Roman character, than in the works relating to Indian law. This has arisen from the fact, that the original transcriptions were, for a lengthened period, merely endeavours to represent the sounds of words, with, of course, more or less accuracy according to the discriminating power of the ear of the transcribers, who were, for the most part, ignorant of the native languages. The confusion that resulted was afterwards still worse confounded by the introduction of the unsightly orthography of Dr. Gilchrist, which neither gives satisfactorily the equivalents of the Eastern characters, nor furnishes even a tolerable guide to the pronunciation of the words. At first I had wished to have adhered to one uniform plan throughout the work, following the system recommended by Sir William Jones in the first volume of the Asiatic Researches, as modified by the Oriental Translation Committee. This, however, I was soon forced to abandon, since it would have rendered many words in the most common use utterly unrecognizable, excepting by an Orientalist. The words Dewanny, rupee, Bombay, and Mysore, for instance—and a host of others might be adduced—would scarcely have been identified by one unacquainted with the Eastern languages, if spelt with reference to the native orthography. Many terms, however, have been transcribed, and are still written, in a variety of ways, and without any pretension to uniformity or correctness. It is obvious that these terms are as likely to be recognised if accurately spelt, as though they were to occur under any other form. Whenever this variety of spelling prevails, I have, therefore, adopted the system of orthography which I originally set out with; but whenever words have been spelt through a long course of years, however erroneously, in one invariable manner, and have thus, as it were, become naturalized into our language, I have retained such spelling. It is difficult, in observing this distinction, to draw the line between those terms which come within the former or the latter class; but in the Glossary which I have appended to this volume I have, in all cases, added the transcription of each word in the Arabic or Dévanágari character. I have restricted the Glossary to such

terms as occur in the present work, giving the meaning of each, so far as I have been able to ascertain, and denoting the language from which it is derived.

The names of cases occurring in the Digest are always given, for convenience of reference, as written in the Reports from which they are taken.[1] The reader, therefore, in referring to the Index of Cases at the end of this volume, will frequently have to seek for what is in reality the same name in different places: *e. g.* the name of Muhammad must be looked for under Mahamed, Mahomed,. Mohammed, Mohammud, Moohummud, Muhammad, and Muhammud. A like difficulty would be experienced in some other instances, but it is of course quite unavoidable.[2]

Before taking leave of this portion of the subject, I may notice a work which is now in progress, and from which we may expect the most beneficial results. Some years since the Honourable East-India Company caused to be printed a List or Dictionary of all the technical terms employed in the administration of the British territories in India. Copies of this List were distributed to the Company's Officials in the various districts, who were invited to furnish details as to the origin and application of each of these terms. The answers obtained have been transmitted to England, and placed in the hands of the learned Professor Wilson, who has far advanced in the preparation for the press of a complete Glos-

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[1] In some instances the names of cases in the Index have been separated, for the reason above mentioned, although they might with more propriety have come together: this, too, has sometimes occurred through inadvertence on my part. The reader is requested, where "The King," "The East-India Company," "The Heirs of, &c.," "The Collectors," and "The Salt Agents," are parties to suits, to refer for cases not found under those heads to "Rex," "East-India Company," "The United Company," "Heirs of, &c.," "Collector," or the names of their Collectorates, and "Salt Agent;" also to look at "Ship" for cases not found under "The Ship."

[2] The variety in the manner of setting down the names of the parties to suits is often productive of a serious inconvenience, which may be here noticed. I allude to the orthography of such names being changed during the course of litigation, and the arbitrary insertion or omission of names, titles, and designations of Cast. Occasionally it becomes no easy matter to identify the parties to a cause in appeal with those who prosecuted and defended the suit in the lower Courts.

sary of all the Indian technical terms. Sir Henry Elliot, Foreign Secretary to the Government of India, in answer to the Company's requirement, contributed such a mass of information on the subject, that the Lieutenant-Governor of the North-Western Provinces directed his work to be published. The first volume has appeared, and, so far as it extends, is exceedingly useful. Sir Henry Elliot's Glossary will be incorporated in the work of Professor Wilson, which will contain every word in alphabetical order, in Roman letters, with transcriptions in the native characters. All the incorrect methods of spelling hitherto employed will be given, with references to the accurate orthography; and each word will be followed by its definition, etymology, and remarks on the different shades of meaning in which it is employed in the various provinces. It is to be hoped that this Glossary, when completed, will put an end to the confusion that has hitherto prevailed; and that henceforth, at least in all official documents, it may serve as a standard of orthography for every Oriental term when technically applied.

I have a large debt of gratitude to acknowledge before I lay down my pen. In the first place, my thanks are due to the Honourable Court of Directors, who have munificently granted me their patronage in the publication of this work, with that liberality which they have so constantly displayed in the encouragement of every project calculated to improve the condition of our Indian fellow-subjects. Whether their patronage has been, in this instance, properly applied, remains to be proved; but of thus much I am certain, that in no case can it be more humanely or judiciously extended, than in promoting a knowledge of the law, and furthering the administration of justice in the mighty empire of which they are the delegated rulers.

I have to express my deep obligations to the late Right Honourable Sir Edward Hyde East, Bart., formerly Chief Justice of Calcutta, who has closed a long and laborious life, devoted to the service of his country, whilst this work has been passing through the press. In doing so, I cannot but feel a melancholy satisfaction in placing in the hands of that Profession, of which he was for so many years an ornament, the latest records of his

valuable experience, committed to my care by his son. I am also especially indebted to the Honourable Sir Erskine Perry, Chief Justice of Bombay, for the luminous and important judgments with which he has favoured me. The accumulation of decisions by competent authorities is undoubtedly one of the surest foundations on which to base any attempt at the codification of the laws of India; and the accession of fresh materials from such sources must therefore be regarded as of the highest utility.

My most sincere thanks are due to the Right Honourable Sir Edward Ryan, late Chief Justice of Calcutta; Horace Hayman Wilson, Esq., Boden Professor of Sanskrit in the University of Oxford; David Hill, Esq., Assistant-Examiner at the East-India House; Richard Clarke, Esq., formerly of the Madras Civil Service; Benjamin Hutt, Esq., of the Bombay Civil Service; and Henry Reeve, Esq., of the Privy-Council Office: to the very learned Judge, for his kindness in furnishing me with materials which I could not otherwise have procured; to the learned Professor of Sanskrit, for having given me the benefit of his extensive and varied knowledge of the law of India; to the four last-named gentlemen, for much valuable information connected with the Regulation Law and the subject of Appeals to this country; and to all and to each for their advice and assistance in the progress of my labours, and for the unvarying kindness and promptitude with which it has been proffered.

The excuses of a writer are but an insufficient apology for the imperfections of his work. Still, in the present instance, when it is considered how many topics concur, how much reading, involving totally distinct studies, is requisite for their illustration, and how arduous is the task of analyzing and arranging the results of such reading, I trust that any obscurity or omission on my part may be deemed pardonable. In the Digest itself I fear that much may have found place which might have been left out, and that matter has been omitted which ought to have been inserted. In a work of so complex a nature, the first of its kind, perfection is, however, hardly to be attained or expected.

I may be permitted to add a few words with regard to this Introduction, in which I have endeavoured to lay before the reader a concise but comprehensive treatise on the past and present systems for the administration of justice in India, and some account of the laws peculiar to that country, as well as of the works from which a knowledge of them may be acquired.

My main object has been, to give, in a condensed form, and in one place, information which has hitherto been diffuse and dispersed, together with such new matter as I could collect from fresh sources. In this attempt I have had to contend with the difficulty of including a vast quantity of materials within inadequate bounds; for although I have already extended this Introduction beyond the limits I had originally proposed to myself, it will be obvious, to any one who has considered the subjects of which it treats, that their complete elucidation would require an infinitely greater space than I have had at my command. I believe, nevertheless, that, although cramped and imperfect, it will be found of some utility, more especially in its bibliographical portion.

Finally, I can confidently assert, that, however I may have succeeded in my task, I should have been most glad to have met with a work like the present when I first entered upon the study of the law of India. Should it save future students but a tithe of the pains it has cost me, I shall not have laboured in vain.

W. H. M.

ERRATA ET EMENDENDA.

P. liii. note 11, *for* Reg. I. 1833, *read* Reg. II. 1833, s. 5.

P. lxii. line 14, *after* Circuit, *insert* in virtue of the authority vested in them by section 3 of the last-named Regulation.

P. lxxxvii. note 6, *for* 41, *read* 43.

P. cvii. note 7. There is an Interpretation of Act III. of 1843, given in the second volume of Mr. Harrison's Code of Bombay Regulations, which must be added, in modification of this note. By this Interpretation, dated the 12th September 1846, "it was declared, that the provisions of Act III. of 1843, limit special appeals from decrees in regular appeals to the Sudder Dewannee Adawlut." The word "special," as used in this Interpretation, must, I apprehend, be confined to appeals from decisions in regular appeals, presented on the ground of the latter being inconsistent with law or usage, or the practice of the Courts. There must, therefore, be a distinction drawn between *second* appeals to the Zillah Judges, which lie from ordinary decisions in regular appeals of Principal Sudder Ameens, and Assistant Judges, under the Regulations, and *special* appeals, grounded on the reasons mentioned in the Act, which, by the Interpretation, do not lie to any Court but the Sudder Dewanny Adawlut. Thus it would seem, that an appellant from a decision passed in a regular appeal, by a Principal Sudder Ameen, or Assistant Judge, may make his election whether he should present his further appeal as a *second* appeal to the Zillah Judges, or go at once, in *special* appeal, to the Sudder Court, on the ground of such decision being contrary to law, usage, or practice. There appears to me to be no question that the right of second appeal to the Zillah Judges from the decisions in regular appeals of Principal Sudder Ameens, and Assistant Judges, as limited by the Regulations, remains untouched by Act III. of 1843, if such second appeal be presented for any other reasons than those specified in the Act. I may add, that the doubt expressed in the note upon which I have thought it necessary to make these observations, was inserted on the very highest authority.

P. ccxxxiii. line 8, *for* Mustásim, *read* Muatasim.

P. ccxxxiv. note 2, line 7, *for* native, *read* Shiáh.

P. ccxxxiv. note 2, line 19, *for* ingenuously, *read* ingeniously.

P. ccxliii. note 6, *for* IV. *read* III.

P. ccl. note 8, *after* البيان *insert* في تفسير القران

P. cclvi. last line, *for* Dúri, *read* Dára.

P. cclvii. line 17, *dele* and.

P. cclxv. lines 17, 20, and 22, *for* Tahawí *read* Taháwí.

P. cclxvi. line 10, *for* Bailey, *read* Baillie.

P. cclxxviii. line 14, *for* Mirám, *read* Marám.

P. cclxxix. line 6, *after* Abú, *insert* Al-Hasan.

P. cclxxix. line 8, *dele* more.

P. cclxxxvi. line 2, *for* Âiní, *read* Âainí.

P. cclxxxviii. line 24, *for* al, *read* at.

A LIST

OF THE

ABBREVIATIONS USED IN THE DIGEST.

Abbreviations.	Name of Work.	Name of Court.
Baillie	Baillie on the Muhammadan Law of Inheritance	———
Baillie, Dig. M. L.	Baillie's Digest of Muhammadan Law (Imámíyah)	———
Barwell's Notes	MS. Notes of Cases, by Mr. Barwell	Sup. Cot. Calc.
Bignell	Bignell's Reports	Sup. Cot. Calc.
Borr.	Borradaile's Reports	Sud. Ad. Bomb.
Clarke's Notes	MS. Notes by Mr. L. Clarke, quoted in Mr. Barwell's Notes	Sup. Cot. Calc.
Cl. R. 1829	Clarke's Rules and Orders, 1829	Sup. Cot. Calc.
Cl. Ad. R. 1829	Clarke's Additional Rules and Orders, 1829	Sup. Cot. Calc.
Cl. R. 1834	Clarke's Rules and Orders, 1834	Sup. Cot. Calc.
Coleb. Dig	Jagannátha's Digest of Hindú Law, translated by Colebrooke. 8vo. Ed.	
Datt. Chan	Dattaka Chandriká, translated by Sutherland	———
Datt. Mim	Dattaka Mímánsá, translated by Sutherland	———
Daya Bh	Dáya Bhága, translated by Colebrooke	
Daya Cr. San	Dáya Krama Sangraha, translated by Wynch	———
East's Notes	MS. Notes of Cases, by Sir E. H. East, C. J.	Sup. Cot. Calc.
Fulton	Fulton's Reports	Sup. Cot. Calc.
Hed.	Hidáyah, translated by Hamilton	———
Knapp	Knapp's Reports	Privy Council.
Macn. Cons. H. L.	Sir F. Macnaghten's Considerations on the Hindú Law	Sup. Cot. Calc.
Macn. Princ. H. L.	Sir W. Macnaghten's Principles and Precedents of Hindú Law	———
Macn. Princ. M. L.	Sir W. Macnaghten's Principles and Precedents of Muhammadan Law.	
Mad. Dec.	Decrees in the Madras Sudder Adawlut	Sud. Ad. Mad.
May	Mayúkha, translated by Borradaile.	
Menu	The Institutes of Menu, translated by Sir W. Jones	

Abbreviations.	Name of Work.	Name of Court.
Mit.	Mitákshará, Chapter on Inheritance, translated by Colèbrooke	———
Moore	Moore's Reports	Privy Council.
Moore, Ind. App.	Moore's Indian Cases	Privy Council.
Mor.	Morton's Decisions	Sup. Cot. Calc.
MS. Notes of P. C. cases	Notes taken by the Author in Court	Privy Council.
N. A. Rep.	Reports of the Nizamut Adawlut, Calcutta	Niz. Ad. Calc.
P. C. Cases	A Collection of Printed Cases, with the Judgments appended *	Privy Council.
Perry's Notes	MS. Notes of Cases, by Sir E. Perry, C. J.	Sup. Cot. Bomb.
S. D. A. Rep	Reports of the Sudder Dewanny Adawlut, Calcutta	Sud. Dew. Ad. Calc.
S. D. A. Sum. Cases.	Reports of Summary Cases in the Sudder Dewanny Adawlut, Calcutta for 1841, and following years,	Sud. Dew. Ad. Calc.
S. D. A. Decis. 1845 &c.	Decisions of the Sudder Dewanny Adawlut of Calcutta, for 1845 and following years, recorded in English	Sud. Dew. Ad. Calc.
Sel. Rep.	Select Reports of Cases in the Sudder Dewanny Adawlut, Bombay,	Sud. Dew. Ad. Bomb
Sev. Cases	Sevestre's Cases †	Sud. Dew. Ad. Calc.
Sm. R.	Smoult's Rules and Orders	Sup. Cot. Calc.
Sm. & Ry.	Smoult and Ryan's Rules and Orders	Sup. Cot. Calc.
Steele	Steele's Summary of the Law and Custom of Hindú Casts	———
Str.	Sir T. Strange's Reports	Sup. Cot. Mad.
Str. H. L.	Sir T. Strange's Hindú Law, 2d. Ed.	
Suth. Synop.	Sutherland's Synopsis of the Hindú Law of Adoption	———

* This collection was made by Mr. Lawford, from the printed cases submitted to Counsel, in the Appeals to the Queen in Council. See *supra*, p. cccix.

† The earlier portion of Mr Sevestre's valuable Reports was confined to Summary Appeals; but as he subsequently extended his plan, the cases reported by him are referred to as Sevestre's Cases. See *supra*, p. ccvii.

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P. 1. c. 1. l. 5. *after* Pleading, *insert*, 11.
P. 1. c. 2. l. 14. *for* Smith and Goad, *read* C. Smith and Martin.
P. 12. c. 2. l. 28. *for* 7. 97. *read* 7. 21 *a*. 97.
P. 14. c. 1. l. 46. for *Anumuti putr*, read *Anumatí patra*.
P. 26. c. 1. *after* the last line, *add* "This Regulation was rescinded by Reg. I. of 1827."
P. 26. c. 2. *after* l. 45. *insert* III. Amendment of Affidavit.—See Practice, 39.
P. 28. c. 1. l. 18. after *seq*. add Forfeiture, 1.
P. 32. c. 2. *add* a foot-note to Pl. 2. "This decision was reversed, on appeal, by the Judicial Committee of the Privy Council, on the 14th July 1830, but on another ground. See 1 Knapp, 316. And see the title Law of Nations, Pl. 1, 2.
P. 33. c. 1. *after* l. 21, *insert* III. By Hindú Mothers.—See Native Women, 10, 11.
P. 34. c. 2. *after* l. 30. *insert* 7. Of Affidavit. —See Practice, 39.
P. 43. c. 1. first line of foot note, *for* 2 *read* 1.
P. 45. c. 2. l. 8. dele *et seq*.
P. 47. c. 1. l. 49. *for* Case *read* Pl.
P. 47. c. 1. last line, *for* Case *read* Pl.
P. 51. c. 2. l. 45. *for* Reg. III. *read* Reg. II.
P. 57. c. 1. l. 4. *for* Synud *read* Syud.
P. 60. c. 1. l. 17. *after* 296 *add* — Harington & Fombelle.
P. 62. c. 2. l. 22. *for* Porrett[1] *read* Porrett[3].
P. 80. c. 2. l. 2. *after* 10 *insert* Interest, 34 *et seq*.
P. 80. c. 2. l. 6. *after* 10 *insert* Pre-emption, 21, 22.
P. 89. c. 1. l. 21. *for* c. 33. *read* c. 74.
P. 89. c. 2. l. 46. *after* XXVI. *insert* & Sir Erskine Perry's Notes, Case X.
P. 98. c. 2. l. 20. for *Numdil* read *Mundil*.
P. 100. c. 2. l. 5. for *Soluhnámeh* read *Sulahnámeh*, and the same at l. 20.
P. 101. c. 2. last line, *after* 113 *add* 389.
P. 106. c. 2. last line but one, for *Khelarís* read *Khálarís*.
P. 115. c. 2. *add* a foot-note to Criminal Conversation, Pl. 1. "And this, although by the Hindú law adultery is a criminal and not a civil offence. 1 Macn. Princ. H. L. 61. And see, with regard to the Hindú law on this point, Menu B. VIII. v. 352—362. 371—385. 1 Str. H. L. 46. 2 Do. 40—44.
P. 116. c. 2. l. 4. *for* 365 *read* 362.
P. 116. c. 2. l. 49. for *Tusheer* read *Tashhír*.
P. 121. c. 2. l. 24. *for* all *read* an.
P. 123. c. 1. l. 49. *for* labour *read* labour.[1]
P. 123. c. 2. l. 28. *for* Pl. 56. *read* Pl. 57.
P. 126. c. 1. l. 46. for *Sogra* read *Saghrá*.
P. 130. c. 2. last line, *add*, And see *infrà* Pl. 389.
P. 147. c. 1. l. 10. for *Moostamin* read *Mustámin*.
P. 162. c. 2. l. 52. *after* 261 *add* First Edition.
P. 162. c. 2. last line, *after* 258 *add* First Edition.
P. 192. c. 1. *after* l. 19. *insert* 5. Damages liquidate.—See Interest, 10.
P. 194. c. 2. *after* line 2. *insert* Dárógháh.—See Public Officer, *passim*.
P. 210. c. 1. *after* l. 20. *insert* VII. By Executors.—See Executors & Administrators, 104.
P. 213. c. 2. l. 24. *after* 6 *insert* Public Officer, 14.
P. 213. c. 2. l. 27. after 126 add *et seq*.
P. 215. c. 2. last line, *after et seq. add* 329.
P. 227. c. 1. *after* pl. 94. *insert* 94 *a*. The acquisitions of an undivided Hindú family will be presumed to have been joint until proved otherwise, the *onus probandi* resting with the party claiming exclusive right. *Gour Chunder Rai* v. *Hurish Chunder Rai*. 20th June 1826. 4 S. D. A. Rep. 162.—Leycester & Dorin.
P. 228. c. 2. l. 24. *add* a foot note, "Act. V. of 1840, provides that Hindús and Muhammadans may make affirmation instead of oath. False affirmation to be punishable as perjury; and the said Act not to extend to Declaration under Act XXI. of 1827, nor to Her Majesty's Courts."
P. 240. c. 1. l. 17. *for* 89 *read* 87.
P. 246. c. 2. l. 2. *after* prejudice *insert Chellummal* v. *Garrow*, and *for* 158 *read* 153.
P. 248. c. 2. l. 52. *dele* and see *infrà* p. 299, note 2.
P. 258. l. 2. Gaming Pl. 2. *add* foot-note, "But this was reversed on appeal by the Judicial Committee of the P. C., and Sir Erskine Perry's judgment upheld. See the learned Chief Justice's judgment in Vol. II. of this work, p. 415."
P. 259. c. 1. l. 16. *for* 18 *read* 17.
P. 277. c. 1. l. 33. *after* See *insert* Gift, 34.
P. 302. c. 2. *after* l. 10. *insert* 1 Generally, 4. 2. Suit on behalf of infants.—See Practice, 104, 105. 107, 108.
P. 303. c. 1. *after* l. 22. *insert* 1. Generally.
P. 333. c. 1. at the end of note 2. *add* And see *infrà*, Pl. 311.

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P. 367. c. 2. l. 37. *after* 317 *add*—Sir E Nepean, Nightingale, & Elphinstone.
P. 373. c. 1. l. 17. *for* 2 East's Notes, 44. *read* East's Notes, Case 57.
P. 387. c. 1. l. 29. *for* 298 *read* 198.
P. 397. c. 1. l. 23. *for* 22 *read* 21.
P. 398. c. 2. l. 16. for *Khelarí* read *Khálari*, and *after* l. 17. *add* Limitation, 78.
P. 412. c. 1. l. 42. *for* 298 *read* 198.
P. 421. c. l. *for* Pl. 42, 43, 44 *read* 46, 47, 48 The numbers are wrong, but the *Placita* thus erroneously numbered have been distinguished in the references by adding the page.
P. 433. c. 2. l. 30 for *Killaris* read *Khálaris*
P. 444. c. l. *after* l. 34, *insert* l. Semble, the management of property left by will for religious or charitable purposes will descend to the children by concubines of the manager, in default of issue by marriage. *Sree Cower and another* v. *Bolaky Sing and others.* 17th July, 1793. East's Notes. Case 128.
P. 548. c. 2. l. 10. for *Sanád* read *Sanad.*
P. 556. c. 1. l. 36. *for* in the time *read* in the lifetime.
P. 577. c. 2. l. 5. for *Sogra* read *Saghrá.*
P. 613. c. 1. l. 58. *for* Pl. 9 *read* Pl. 10.
P. 613. c. 2. l. 46 *for* 7 *read* 7 *a.*
P. 631. c. 1. l. 3. the derivation of the word *Dharát*, "discount," from the Arabic ضراعة literally, "infirmity, submission," was adopted with hesitation, I am inclined to consider the word as taken from the Bengali धरार "a loan," "a ransom."
P. 642. c. 1. l. 45. *for* صغرار *read* صغرا and for *Sagra* read *Saghrá.*
P. 644. c. 1. l. 18. *for* سدر *read* صدر.
P. 645. c. 1. l. 43. for *Tasshir* read *Tashhír.*
P. 647. c. 2. l. 26. *after* 8 *a. add* British subject, note.
P. 648. c. 1. l. 32 *for* 496 *read* 491.
P. 651. c. 1. l. 37. The reference to the title Will, 31 *a.* 41. should be under Reg. XXV. Sec. 8. of 1802.
P. 654. c. 1. l. 27. *after* 43 *insert* Inheritance, 251.
P. 654. c. l. *after* l. 18. insert *Ajoodhea Pershad* v. *Zora.* Criminal Law, 304.
P. 664. c. 2. l. 13. *after* 55 *insert* 68.
P. 670. c. 2. l. 46. *for* 7 *read* 7 *a.*
P. 673. c. 2. *dele lines* 47, 48.
P. 674. c. 1. l. 57. *dele* the word *Talookdar.*
P. 674. c. 1. l. 8. *after* 55. *insert* 68.
P. 679. c. 2. l. 65. *for* 221 *read* 22.
P. 682. c. 2. *after* l. 23. insert *Heir of Omr Sing* a. *Shamchurn Sing, Heirs of.* Bailment, 2.
P. 682. c. 2. *after* l. 35 insert *Heirs of Shamchurn Sing* v. *Omr Sing, Heir of.* Bailment, 2.
P. 711. c. 1. l. 2. *after* Chowdry *insert* Contempt, 1.
P. 716. c. 2. *after* l. 42. insert *Rambuxus Sing* v. *Juggutsett Govindchund.* Jurisdiction, 94.
P. 718. c. 1. *after* l. 13. insert *Ramcaunt Dutt* v. *Gholam Nubee Chowdree.* Assessment, 20.

END OF THE FIRST VOLUME.